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THE CONFLICT OVER COÖRDINATION

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Any attempt impartially to analyze the issues involved in the controversy between President Wilson and Senator Chamberlain, which culminated in a victory for the former in the passage of the Overman bill, will meet with serious difficulties. An error, too common to much current journalism, and not entirely absent from the more technical and highly specialized articles when they deal with political subjects, is that of attributing a certain result to one factor when it is brought about by a plexus of causes. Most important political controversies, especially those of national import, involve numerous currents of cause and effect, which, to be understood clearly and appraised impartially, demand of the conscientious publicist careful consideration in their true relationship. Because the fight over coördination involved many prominent men, much diversity of opinion, issues both national and international, and—though indirectly—the question of universal military service, its treatment in an adequate manner is by no means easy.

What is meant by coördination? The noun is defined in the Century dictionary as "the act of arranging in due order or proper relation, or in a system; the state of being so ordered." The verb "to coördinate" is defined: "to place, arrange, or set in

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due order or proper relative position; bring into harmony or proper connection and arrangement." The meaning of coördination as applied to the problem of putting the executive machinery of the government on the best possible war footing is the making of necessary shifts or changes so as to produce the maximum of efficiency with the minimum of friction, while at the same time preserving as far as possible the spirit of republican institutions. For the executive departments and agencies of government properly to function, coördination is necessary. To function perfectly—and this no governmental machinery, executive, legislative, or judicial can ever do—there must be perfect coördination. The larger the problems of government, the greater the amount of business handled, the more abnormal the conditions under which the governmental machinery operates, the more difficult the matter of coördination becomes. The degree of smoothness with which the governmental machinery operates is measured by the amount of coordination between the executive, legislative and judicial branches. The degree of smoothness with which the executive branch of the government functions is measured by the amount of coordination of its various departments and agencies.

The entrance of the United States into the world war threw a heavy load upon the executive. Not only were the regular departments heavily burdened, but new agencies were created and new parts added to the executive machinery. To meet the strain thrown upon the regular executive departments by war conditions; to secure coöperation between the various executive agencies, new and old; to increase speed and efficiency without engendering unnecessary friction—these things called for executive coördination. What had happened in the executive branch of the government is analogous to what we see in a motor. When the cylinders are properly timed so that each fires in proper relationship to the others the motor runs smoothly and, all other things being equal, attains its maximum of efficiency. This we ordinarily speak of as "smoothness" in the motor's operation. The entrance of America into the war has affected our executive machinery very much as the climb up a long and steep

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hill would affect a motor car. It has displayed weaknesses, lack of coördination, and friction, not so apparent under normal conditions, just as the stress of hill-climbing would indicate any slight imperfection or lack of smoothness in the motor not so apparent on a level road.

An organ for securing executive coöperation and coördination had indeed been provided in the council of national defense, created by the National Defense Act of 1916. Moreover this council, made up of the heads of executive departments, was clearly linked to the previously existing organs of government, although some important departments were omitted. But while much had been accomplished through the agencies of this council, the elaborate organization of boards and committees had not furnished the most efficient machinery; and the very number of these agencies had further complicated the problem of adjustment, not only between themselves but also between the new bodies and the older official authorities.

The importance of coördination had been already impressed on the administration and much work had been done along this line in a quiet and unobtrusive way before a series of violent attacks on the war department, and on Mr. Baker, the secretary of war, made coördination the subject of bitter controversy. The attacks did not create the movement for coördination. They did, however, serve to focus public attention upon the problem. Not whether there should be coördination of the various executive departments and agencies for greater efficiency in the conduct of the war, but the method by which such coördination could best be secured, became the important question. This question of method has been decided, the writer believes in the wisest possible manner, by the passage of the administration measure—the Overman bill. The conflict over this measure involved a battle royal between the administration and its critics and opponents. Should Congress give the President the blanket authority to coördinate or should it attempt to force on him a program other than his own?

It is only fair to Congress, and especially is this true of the house of representatives, to state what seems an easily demon-

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strable fact, that by far the larger part of the sixty-fifth Congress has shown all along a determination to put patriotism above political partisanship. This is true both of Democrats and Republicans. In the main the opposition to the presidential plan for coördination has been negligible in the house, only two members voting against the Overman bill on its passage. The same is true of the senate, but to a lesser degree, for there the chief opposition to the Overman bill, most of the intemperate and ill-timed criticism of the President, and most of the exaggerated charges against the secretary of war and his department, originated and were aired. There, too, most of the support of the war cabinet bill was found. Yet it was in a relatively small group of senators that this opposition to the President and his plan of coördination centered; for when it came to a vote on the Overman bill only thirteen senators dared to vote against the measure.

If it be true that there was practically no debate as to the desirability of coördination; if the only important question was concerning the method by which the increased efficiency could be best obtained, why was it that the legislation so necessary to that end was delayed for months while senators, who professed to desire above all things a speeding up of the war, debated as between two methods of coördination, one possible and expedient, the other impossible and inexpedient? The answer to this question is difficult, for the opposition to the Overman bill, in the senate and outside, contained many elements, acting from various motives and viewing the problem from many different angles. The real question, then, is not so much one concerning the merits of the Overman and Chamberlain war cabinet bills, but an analysis of the opposition, to the end of finding out as far as possible who opposed the Overman bill and why.

As between the Overman and Chamberlain bills there should have been no great difficulty in choosing. Each attempted to attain greater efficiency through coördination; the Overman bill, by granting the President authority to reorganize the executive departments and agencies to secure coöperation and

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eliminate friction; the Chamberlain bill, by granting those powers, which the Overman bill allows the President, to a war cabinet "of three distinguished citizens of demonstrated executive ability." The Overman bill made use of the President, a constitutional officer whose powers are marked out by the Constitution; the Chamberlain bill proposed a directory, a new and untried instrument of doubtful constitutionality. The war cabinet bill was complicated and the Overman bill simple; yet the great difference between them was the fact that the Overman bill, while granting no new constitutional powers to the President, gave him considerable latitude in the use of his constitutional authority; and the war cabinet proposal would have introduced into the executive an entirely new body, vested with extraordinary powers.

The Overman bill was entitled "A bill authorizing the President to coördinate and consolidate the executive bureaus, agencies, officers, and for other purposes, in the interest of economy and the more effective administration of the Government." It provided that, during the war, the President shall have power "to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties and powers hitherto by law conferred upon any executive department, commission, bureau, agency, office or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this act, and to this end is authorized to make such regulations and to issue such orders as he may deem necessary; provided, that this act shall remain in force during the continuance of the present war and for one year after the termination of the war."[1]

The bill further provided that "in carrying out the purposes of this act the President is authorized, in such manner as he may deem most appropriate, to coördinate or consolidate any executive commissions, bureaus, agencies, offices or officers to transfer

[1] The only amendment accepted by the administration leaders, that proposed by Senator Jones of Washington, a supporter of the Overman bill, limits the effect of the reorganizations made under the bill to six months instead of one year after the war.

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any duties or powers from one existing department to another, to transfer the personnel thereof or any part of it, either by detail or assignment, together with the whole or any part of the records and public property belonging thereto, and to employ by executive order any additional agency or agencies and to vest therein the performance of such functions as he may deem appropriate."

"That for the purpose of carrying out the provisions of this act, any moneys heretofore and hereafter appropriated for the use of any executive department, commission, bureau, agency, office or officer shall be available for the purposes for which it was appointed, under the direction of such other agency as may be directed by the President hereunder to perform and execute said function."

These were the main provisions of the Overman bill, as introduced into Congress with the approval of the administration.

After providing for the appointment "of three distinguished citizens of demonstrated executive ability," the war cabinet bill proposed to give them certain powers, among which the following seem to be the more important:

"To supervise, coördinate, direct and control the functions and activities of all executive departments, officials and agencies of the Government in so far as, in the judgment of the War Cabinet, it may be necessary or advisable so to do for the effectual conduct and vigorous prosecution of the existing war."

"To consider and determine upon its own motion or upon submission to it, subject to review by the President, all differences and questions relating to the conduct and prosecution of the war that may arise between any such departments, officials or agencies of the Government."

"To require information and utilize the services of any or all executive departments and executive officers or agents of the United States and of the several States and Territories and the District of Columbia whenever necessary or helpful in the proper performance of the duties of said War Cabinet."

"In the exercise of the jurisdiction and authority hereby conferred, to make, subject to the review by the President, the

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necessary orders to any such department, bureau, official or agency of the Government and such decisions as the matters under consideration may require or warrant."

"That the Secretary of War and the Secretary of the Navy, respectively, shall assign to duty with the War Cabinet such commissioned officers as the War Cabinet may request, and said War Cabinet shall employ all clerical and other employees required for services with it, and in addition to the officers assigned thereto as herein provided, the President may appoint for duty with said War Cabinet such officers as the War Cabinet may determine to be necessary, who shall receive until otherwise prescribed by law such compensation as the War Cabinet shall deem just and reasonable."

In an analysis of the war cabinet bill, published in the *New York World*, Roger Foster has written as follows:

"But the War Cabinet Bill gives them [the war cabinet] powers which are still greater [than those granted the President in the Overman bill], more extraordinary and dangerous. It grants the War Cabinet the power to assign to such duty as it may determine any commissioned officers of the country. It may recall a General from France and substitute another. Such a power is one of the most ordinary and undisputable powers vested in the Commander in Chief of any army. To take it away from the President would be unconstitutional. The same bill authorizes the War Cabinet to command the officers of the different States, State Governors, and, if the language is not narrowed by judicial consideration, even State Judges. There is nothing in the Constitution authorizing such power to be given by Congress to any Federal officer, although the power of the President as Commander in Chief might in case of emergency include it."

"Finally, and this is the real object of stripping the President of his powers as Commander in Chief, the bill authorizes the War Cabinet to employ an unlimited number of clerical and other employees, to have assigned to service under such Cabinet any officers whom the War Cabinet may select, and the War Cabinet is authorized to pay them whatever compensation it may deem

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just and reasonable. Coalitions and directories have always been convenient instruments for political corruption. Such a division of unlimited spoils among the henchmen of the three distinguished citizens of demonstrated executive ability whom it is sought to force into office may well incite the enthusiasm of Congressmen, but when the object is revealed it is not likely to be stomached by the American people."

Certain it is that the war cabinet plan would have led into new and untried paths, and because of its doubtful constitutionality, it is impossible to see that it would simplify matters or make for increased executive efficiency. Even were it to do all that its advocates claimed for it, grave difficulties of interpretation and judicial construction would undoubtedly arise; and in the writer's opinion instead of simplifying matters it would open an endless field for partisan politics, friction, and misunderstanding. Instead of cutting red tape, chances for additional trouble would have been greatly increased by the passage of such an experiment.

Had there been no other objections to the war cabinet, however, the sincere and determined hostility of the President to any such proposal constituted an insurmountable obstacle. The impossible method of coördination, then, was embodied in the Chamberlain war cabinet proposal—impossible because from the outset Mr. Wilson declared himself as unalterably opposed to it. If such a "super cabinet" could have worked in any circumstances, a matter of extreme doubt, it could only have worked through the President. President Wilson did not want the war cabinet and he very frankly and firmly said so. Even if the measure could have mustered the necessary two-thirds vote in each house to pass it over the presidential veto—a thing it had not the slightest chance of doing—nothing could have forced the President to use the war cabinet or delegate to it any of his constitutional powers. The President is given certain definite powers by the Constitution; no war cabinet established by statute could exercise any executive powers belonging to him without his consent. A war cabinet "of three distinguished citizens of demonstrated ability" could function only through the President—could act only on his initiative.

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The writer believes that this war cabinet proposal was really a "vicious and unconstitutional" measure, aimed at deposing the President from his constitutional position as "Commander in Chief of the Army and Navy of the United States and of the militia of the several States when called into the actual service of the United States." Many of the sponsors of this measure, or of the opponents of the Overman bill, or both, had shown themselves on more than one occasion as opposed to the President and his policies. Of the Democrats who opposed the presidential plan of coördination, several have been consistently anti-Wilson. Senator Chamberlain of Oregon, a Democrat from a Republican state, has been opposed to the Wilson policies or out of active sympathy with them during most of Mr. Wilson's years in the White House. Hitchcock of Nebraska, Reed of Missouri, Hardwick and Smith of Georgia, Underwood of Alabama, Gore of Oklahoma, and Vardaman of Mississippi have either deserted, or refused actively to support, the administration on a number of important occasions. Among the Republicans who supported the war cabinet proposal, or who voted against the Overman bill, or to amend it in such a way as to render it distasteful to the President, are those who have been most consistently, if not always most intelligently, opposed to the administration.

Even could its supporters have induced the President to accept the war cabinet bill, even should the Supreme Court have upheld its constitutionality, the measure, viewed in the light of history and experience, would have been of doubtful expediency. Our experience in the American Revolution impressed indelibly upon the minds of those who lived "during the days that tried men's souls" the futility of trying to wage war effectively without centralized executive power. The struggle for independence was all but lost because of no unified executive authority and the continual meddling of the Continental Congress with military operations. Washington and the other framers of our Constitution knew what they were doing when they wrote into that document the provision whereby in future wars the army and navy should be commanded, not by a war cabinet "of three

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distinguished citizens of demonstrated executive ability," but by the President of the United States.

The reason why the federal Constitution contained such a provision was undoubtedly to prevent Congress from enacting such legislation as the Chamberlain war cabinet bill. Its framers took pains, if we can believe one of them, Alexander Hamilton, who had served in the Continental Army and knew something of the Conway Cabal and the bitter hours at Valley Forge, to make such a war council or super cabinet impossible under the Constitution. In the seventy-fourth paper of the *Federalist*, Hamilton explains very clearly the reason why the President was made Commander in Chief.[2] To Hamilton's testimony may be added the opinion of Justice Story, an eminent commentator on the Constitution. He emphasizes the importance of centralized executive authority in military matters, and points out conclusively the wisdom of vesting the command of the army and navy in the President of the United States.[3] In

[2] "The President of the United States is the 'Commander-in-Chief of the Army and Navy of the United States and of the militia of the several States when called into the active service of the United States.' The propriety of this provision is so evident in itself and it is at the same time so consonant to the precedents of the State constitutions in general that little need be said to explain or enforce it. Even those of them which have in other respects coupled the Chief Magistrate with a council have for the most part concentrated the military authority in him alone. Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war implies the direction of common strength, and the power of directing and employing the common strength forms a usual and essential part in the definition of the executive authority." *The Federalist*, Paper 74.

[3] "Of all the cares and concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. Unity of plan, promptitude, activity and decision are indispensable to success, and these can scarcely exist except when a single magistrate is entrusted exclusively with the power. Even the coupling of the authority of an executive council with him in the exercise of such powers enfeebles the system, divides the responsibility and not infrequently defeats every energetic measure. Timidity, indecision, obstinacy and pride of opinion must mingle in all such councils and infuse a torpor and sluggishness destructive of all military operations. Indeed, there would seem to be little reason to enforce the propriety of giving this power to the Executive Department (whatever may be its actual organization), since it is in exact coincidence with the provisions of

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Ex parte Milligan, a leading case, the Supreme Court draws a most careful distinction between the congressional and presidential powers in military matters.[4] There can be no doubt that guided by the experiences of the American Revolution, the framers of the Constitution provided that the command of the forces of the United States should be vested in a single executive.

Let us turn from the war cabinet and Overman bills and sketch as clearly as our space permits the events that led up to the passage of the latter. It seems reasonably certain that much of Senator Chamberlain's opposition to the President and his policies had its root in the refusal of President Wilson and Secretary of War Baker to take advantage of the excitement caused by our entrance into the war to establish universal military service as a permanent policy. Universal military service is a hobby of Senator Chamberlain. He believes in it earnestly and would like to see it adopted; but he was wrong in the method by which he wished to have it adopted. If the American people, considering the proposition on its merits, decide in favor of universal military service, well and good; but it would have been a great wrong to force such a measure on a people always opposed to militarism by taking advantage of war excitement. President Wilson and Secretary Baker, both far better interpreters of public opinion than Mr. Chamberlain, refused to use their influence for universal service and the Chamberlain plan failed.

Some time later the creation of a special war cabinet was proposed and a bill to that end was prepared by Senator Chamberlain. Just who was back of this proposal and why would be a difficult matter to determine. There are persons in the United States who know so little of the nature of parliamentary or cabinet government, who understand so dimly the workings of our own system, that, seeing the European nations turning to coalition cabinets, they thought the United States also should

our State constitutions, and therefore seems to be universally deemed safe if not vital to the system." Story, *Commentaries on the Constitution of the United States*, chapter XXXVII.

[4] Ex parte Milligan, 4 Wall. 2; 18 L. ed. 281.

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have a similar body. Coalition governments are usually sources of weakness as well as of strength; and the necessity for support by a parliamentary majority has forced the European countries to turn to them in crises not because they want them, but because they cannot do without them.[5] Often in a war cabinet the elements of weakness almost, if not quite, outweigh the elements of strength. Especially is this true in dealing with matters of domestic policy.[6] Some partisan Republicans wished a coalition, because they thought it impossible for the country to be honestly or efficiently governed by an administration wholly Democratic. Some of its advocates may have wished to humiliate the President by forcing on him a war cabinet which would divide with him his constitutional authority.

Almost immediately news came from the White House that any such measure would be obnoxious to the President, and Secretary Baker's open condemnation of the scheme apprised Senator Chamberlain and his supporters of the fact that their proposal had incurred pronounced executive disapproval. However, Senator Chamberlain continued in his advocacy of the war cabinet, and in an address before the National Security League in New York on January 19 he made sweeping charges against the executive department of the government. Indeed, it seems hard to understand how an experienced public speaker could have so far forgotten himself as to indulge in such patent exaggerations and gross misstatements. Urging the necessity of a war cabinet, Senator Chamberlain declared that "the military establishment of the country had broken down and had almost stopped functioning, because of inefficiency in every bureau and every department of the government." For this reason he proposed to introduce on the following Monday a bill for the creation of a war cabinet. President Wilson, after he had ascertained that Senator Chamberlain's New York speech had been correctly reported, issued a formal statement as follows:

[5] The new British war cabinet of five members replaced, not a single executive, but an unwieldy body of twenty-three; and clearly involved supplanting the former prime minister.

[6] The handling of the Irish question by the British cabinet offers ample illustration of the truth of this statement.

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"Senator Chamberlain's statement as to the present inaction and ineffectiveness of the government is an astonishing and absolutely unjustifiable distortion of the truth. As a matter of fact, the War Department has performed a task of unparalleled magnitude and difficulty with extraordinary promptness and efficiency. . . . . My association and constant conference with the Secretary of War have taught me to regard him as one of the ablest public officials I have ever known. . . . . To add, as Senator Chamberlain did, that there is inefficiency in every department and bureau of the government, is to show such ignorance of actual conditions as to make it impossible to attach any importance to his statement."

In the same statement the President referred to the investigations of army affairs which Congress had been conducting, and to the proposed war cabinet legislation. He said:

"Nothing helpful or likely to speed or facilitate the war tasks of the Government has come out of such criticism and investigation. I understand that reorganizations by legislation are proposed. I have not been consulted about them and have learned of them only at second hand, but their proposal came after effective measures of reorganization had been thoughtfully and maturely perfected. . . . . The legislative proposals I have heard of would involve long additional delays and turn our experience into lost motion."

The above statement was issued on the evening of January 21. Earlier on the same day Senator Stone of Missouri, a Democrat, who, in the early stages of the war, had been an open opponent of the President's war policy, made an impassioned defense of the administration. He attacked the Republican critics of the President for unpatriotic partisanship, paying special attention to Mr. Roosevelt, a bitter critic of the President, whose recent activity in Washington and whose presence on the platform with Senator Chamberlain in New York had made many believe that he was one of the leaders in the attacks on the war department. Senator Lodge of Massachusetts, a Republican, replied in a vigorous speech in which he maintained that the Republicans had supported the President during the war more loyally than many of his own party.

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On January 24 Senator Chamberlain introduced his bill for a war cabinet. It was referred to the military and naval committees. After introducing his bill he made reply to the President's statement. He failed absolutely to make good his charges of inefficiency against "every bureau and department of the government;" and the evidence that he presented did not sustain his charges "that the military establishment of the country had broken down and had almost stopped functioning." His evidence did prove, what the secretary of war was willing to admit, that there had been some mistakes, which were being corrected as speedily as possible, and a few cases of neglect of sick soldiers which were exceptional and for which those responsible would be punished. The entire Chamberlain speech was unfair to the administration, and misleading to the public, in that it laid great stress on the few mistakes of the war department without giving it credit for the vast and difficult tasks that had been accomplished. Senator Chamberlain painted a very dark picture of the government's war work, because he tried to make the public see the occasional mistakes and failed to show the background of accomplishment before which the mistakes were insignificant.

The President's reply to his critics, especially those critics who demanded coördination through a war cabinet, was the Overman bill. On February 11 the President took personal charge of the movement for the passage of this measure. The bill brought forth much adverse criticism from senators who had been loudest in their claims that there was lack of coördination in the government and poor business management of the war. Some of the critics of the administration were placed in the position of demanding better business management of the war, but of objecting to President Wilson being the business manager. The active fight begun by the administration leaders for the passage of the Overman bill sounded the death knell of the abortive Chamberlain war cabinet measure.

On February 15 Senator Weeks of Massachusetts took up the argument for the war cabinet. In a carefully prepared speech he condemned the alleged rifle and powder shortage; attacked

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Secretary Baker on the grounds of pacifism, because Mr. Baker had opposed universal military training; and urged the passage of the war cabinet bill. The most interesting part of this speech sheds much light on why those who are in favor of universal military service as a permanent policy have been so actively opposed to Secretary Baker. After a general criticism of the war department, Senator Weeks said:

"If I were to make a further criticism of Secretary Baker it would relate to his temperamental relationship to war. Doubtless he himself will admit that he is a pacifist by nature. For example, he is even now opposed to universal military training, one of the benefits we ought to get out of the great sacrifices we are making."

The real test of the sentiment of the senate regarding the Overman bill was not the final vote, for only 13 senators are recorded as voting against the measure. It was in attempting so to amend the bill as to make it unsatisfactory to President Wilson that those, who for various reasons opposed the bill, went on record. Two amendments to the Overman bill, offered by Senator Hoke Smith of Georgia, aimed to exempt the federal reserve board and the interstate commerce commission, respectively, from the operations of the measure. The vote on these amendments was taken April 27; and these two votes, substantially the same, were looked upon as the test of senatorial support of the administration. For the amendment exempting the federal reserve board, there voted ten Democrats—Chamberlain, Gore, Hardwick, Hitchcock, King, Reed, Smith of Georgia, Thomas, Underwood, and Vardaman—and twenty-seven Republicans—Borah, Brandegee, Cummins, Curtis, Dillingham, France, Frelinghuysen, Gallinger, Gronna, Hale, Harding, Johnson of California, Kellogg, Knox, Lenroot, Lodge, McCumber, New, Norris, Page, Poindexter, Sherman, Smoot, Sterling, Townsend, Wadsworth, and Watson. The vote on the other Smith amendment was practically the same. Seven Republicans—Baird, Colt, Jones of Washington, McLean, McNary, Nelson, and Warren—voted with the thirty-four Democrats supporting the administration to defeat the first Smith amend-

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ment. Borah of Idaho joined these seven in voting against the other amendment. This test vote on the first Smith amendment marks the high tide of senatorial opposition to the President.

When one contrasts the attitude of the house toward the administration during the present year with that of the senate during the same period, one is forced to the conclusion that the house of representatives is more truly representing the American people; and that a considerable element in the senate is seeking party advantage in the war. Strange to say the senators who have been most insistent in their demands for non-partisanship in the executive branch of government have often been the most violently partisan in action and utterance.

Beginning even before the controversy in Congress over these measures, important alterations have been made to secure a more effective organization of the executive machinery. In the war department there have been significant changes in personnel, in the functions and organization of the general staff, and in the organization of the ordnance and quartermaster services. The most vital work of the council of national defense has been concentrated in the war industries board, the chairman of which has effective powers of control. Far-reaching changes have been made in the agencies dealing with shipping and aviation problems. Under the Overman Act, the President has made some transfers of functions and powers, as in placing the legal advisers of independent boards and commissions under the supervision of the attorney general. Moreover the President, independently of the Overman Act, has called together the heads of the military and naval departments, with those of a number of the new war agencies, into a council, meeting at intervals, which may prove a more satisfactory war cabinet than that proposed in the Chamberlain bill.

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FEDERAL ASPECTS OF PREFERENTIAL TRADE IN THE BRITISH EMPIRE

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The battle over the Corn Laws was fought out in Great Britain as a domestic issue. But it had nevertheless a great imperial significance. During the mercantilistic régime the colonies had been regarded as a commercial appanage of the mother country. The victory of the free traders opened up a new era in the economic history of the empire. The colonies were released from the irksome restrictions of the Navigation Laws. They acquired the right to frame their own tariffs with a view to their own particular interests. In short, they ceased to be dependent communities and became self-governing states.

But the emancipation of the colonies was by no means complete. The home government still claimed the right to control their tariff policies. The colonies were privileged, indeed, to arrange their tariff schedules according to local needs; but it was expected that their tariff systems would conform to the fiscal policy of the mother land. The free traders, no less than the mercantilists, were determined to maintain the fiscal unity of the empire. There was still an imperial commercial policy; its motif only had been changed from protection to free trade. The colonies were still bound to the fiscal apron strings of the mother country; but the strings were no longer so short, nor the knots so tight as they had formerly been.

INTERCOLONIAL PREFERENCE IN AUSTRALIA

In furtherance of the new imperial policy, the British government inserted a provision in the Australian Colonies Constitution Act prohibiting the local legislatures from levying discriminating duties. The natural economic unity of the Australian

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group was sacrificed to further the interest of international free trade. At first the colonies did not protest. But with the growth of population and intercommunication, the colonial governments came to realize the necessity for closer political and economic relations. The executive council of New South Wales in 1866 petitioned the imperial Parliament to repel the constitutional provision in respect to discriminative duties. The Tasmanian government soon after took up the question of intercolonial reciprocity with earnestness and enthusiasm. At the same time the New Zealand executive demanded the right for the colonies to enter into reciprocity treaties with foreign states. But the Australian governments were not ready for such advanced action. Some of the Australian leaders were inclined to think that this demand encroached upon the sovereign treaty making power of the imperial government, and that it might be a step in the direction of independence. The Australian governments accordingly determined to restrict their efforts to intercolonial reciprocity only. At three successive conferences the colonies proclaimed their right to control their intercolonial fiscal policies without restriction or interference on the part of the mother country. The resolutions in 1871 ran as follows:

1. "That the Australian colonies claim to enter into arrangements with each other, through their respective legislatures, so as to provide for the reciprocal admission of their respective products and manufactures either duty free, or on such terms as may be mutually agreed upon."

2. "That no treaty entered into by the Imperial Government with any foreign Power should in any way limit or impede the exercise of such right."

3. "That imperial interference with colonial fiscal legislation should finally and absolutely cease."

4. "That so much of any Act or Acts of the Imperial Parliament as may be considered to prohibit the full exercise of such right should be repealed."

The claims of the Australian colonies were greatly strengthened by the fact that the Canadian provinces and New Zealand were not subject to the same fiscal restrictions. For some un-

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known reason the British government had failed to place any constitutional limitations on the fiscal freedom of the latter. Thanks to this omission, the British North American colonies were able to enter into reciprocal agreements for the preferential exchange of their local products and manufactures. Not only so, but they were also permitted to enter into a reciprocity agreement with the United States, under the terms of which American products were admitted into the British North American provinces at lower rates of duty than the same products from Great Britain and the colonies beyond the seas. Moreover, this agreement was not only ratified by, but was actively promoted by the British government itself. The same policy was pursued after the federation of the Canadian provinces. The Canadian parliament expressly provided for the adoption of reciprocal preferential arrangements with Newfoundland and Prince Edward Island, and negotiations were opened up with the West India Islands to the same end. In view of these precedents, the Australian colonies contended that they could not justly be denied a like measure of fiscal freedom and independence.

The reply of the Conservative government at Westminster was an emphatic *non possumus*. "By acceding to this request," the Duke of Buckingham stated, "Her Majesty's Government would recognize the principle that any group of neighboring colonies, or perhaps that any number of colonies not neighboring might make arrangements for the admission duty free of each others' products, and thus constitute differential duties as against foreign nations or even against this country."

Fortunately, the Liberal party soon after came into power. Lord Kimberley, secretary of state for the colonies, was a Liberal imperialist, and, as such, more favorable to the nationalistic pretensions of the colonies than his Conservative predecessor. But his lordship was, nevertheless, a strong free trader, and could not help but look upon the fiscal vagaries of the Australian colonies with sad misgivings. He was especially concerned lest the policy of preferential trade should be made to serve the purpose of colonial protection. The adoption of such a policy would sanction the policy of differential duties within

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the empire, the political results of which, he feared, could scarcely fail to weaken the imperial connection. As a preferable alternative, he suggested a customs union or better still a complete federation of the Australian colonies. An Australian *Zollverein* would, in his judgment, secure all the political and commercial advantages of intercolonial preference, without entailing any of the dangerous consequences of the latter policy.

But the colonies refused to be sidetracked. They demanded the right to enter into reciprocal preferential conventions; and they would accept nothing more nor less. The colonies, they pointed out, were not yet ready for a federation. All attempts to bring about an assimilation of Australian tariffs had signally failed. The local legislatures were not prepared to sacrifice their fiscal independence to a federal assembly, but they were anxious to recognize the incipient spirit of Australian nationalism by the grant of preferential treatment. The policy of intercolonial preference, it was true, did not go so far as the colonial office desired, but it was at least a most important step in the direction of the unification of the colonies. Such had been the experience in Canada, and there was every reason to believe that similar results would follow in Australia. But in any case, apart altogether from federation, the Australian colonies were entitled to formulate their own tariff policies with a view to their common fiscal interests.

Lord Kimberley was in a difficult position; he was forced to make a choice between his economic creed and his political principles. The doctrine of free trade had come into hopeless conflict with the Liberal principle of colonial self-government. His suggested compromise had been decisively rejected. He expostulated with the colonies, but at last was forced to give way. The maintenance of an imperial policy, he clearly saw, must needs give place to the demands of colonial nationalism. In response to these demands, in 1873 he introduced the Australian Colonies Customs Duties Bill, under the terms of which the Australian colonies were empowered to "make laws with respect to the remission or imposition of duties upon the importations into such colony of any article, the produce or manu-

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facture of, or imported from any other of the said colonies." The bill encountered some opposition in the house of lords, from a small handful of stanch free traders, but its adoption was carried by a large majority. Parliament had come to realize that it could no longer control either the domestic or intercolonial relations of the colonies. It was called on to make a partial surrender of its imperial sovereignty, and it made it generously.

The colonies had won a splendid victory. They were now free to proceed with their preferential program. Reciprocity was no longer a theoretical question; it was a practical problem of intercolonial politics. A strange transformation in the attitude of the colonies ensued. The enthusiasm for reciprocity largely disappeared. With the first definite proposals for preferential conventions, the colonies were changed from allies into rival and competing states. The former attitude of mutual suspicion and jealousy at once reasserted itself. Intercolonial reciprocity in theory was an excellent bond of union; in practice it brought out all the latent fiscal antagonism of the colonies. Negotiations among the colonies were long and complicated. First one and then another took up the reciprocity program in the hope of finding a wider market for local products, or of joining the colonies in a closer commercial alliance. But all these efforts were wasted. There was absolutely nothing to show for the expenditure of time and effort. Not one reciprocity proposal was ever adopted. The policy of intercolonial preference, it was found, was an *ignis fatuus*. It held out the most alluring prospect of Australian unity, but it resulted only in intercolonial tariff complications.

The reasons for the failure of the reciprocity movement are not difficult to discover. The first difficulty arose out of the divergent needs of the local treasuries. All of the colonies were dependent upon customs duties for a considerable proportion of their revenue. Some of them, in fact, derived almost all of their income from this source. Not one of them was in a position to sacrifice a material proportion of its income for purely sentimental considerations. Howsoever much they might de-

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sire to promote their export trade to the sister colonies, they dared not do so at the expense of the local exchequers. The fiscus stood first. Its imperious requirements could not be waived, even for commercial advantages. Yet that was what reciprocity demanded. It meant for each of the colonies either the entire repeal or a partial reduction of duties on some of the leading articles of import, in which other colonies were primarily interested. These reductions moreover could not be made to work equitably all around. Some of the colonies must inevitably be harder hit than others. And in the preliminary negotiations it seemed that the weaker colonies were likely to be the heaviest sufferers. This difficulty could not be avoided; it immediately appeared as soon as a practical proposal for reciprocity was presented. This complication alone would have sufficed to defeat the preferential program.

Much more serious were the economic difficulties. The colonies were in different stages of economic development. The two larger colonies, Victoria and New South Wales, altogether outranked the sister provinces in wealth, population and resources. They had reached the stage of comparative economic independence, and did not feel the same necessity for closer relations with their neighbors. The smaller colonies, on the other hand, were all too conscious of their economic weakness. They needed an outlet for their surplus products, but had little to offer by way of exchange. The larger colonies laid down the most humiliating conditions as the price of a reciprocity agreement. The smaller provinces were poor but proud. They refused to sacrifice their fiscal independence, or accept the tariffs of their more powerful neighbors.

The fundamental difficulty, however, was the question of the tariff. Most of the colonies had adopted the principle of protection. They had come to look upon the sister colonies as dangerous, if not hostile, competitors. To the narrow-minded provincialist, the importation of goods from the neighboring colonies was as objectionable as from a foreign state. It constituted an invasion of the home market. The maintenance of a protective tariff was to the ultra-protectionists the most im-

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portant principle of government. They bitterly opposed any interference with the sacred doctrine of protection, even in the interest of closer economic union with their neighbors. This sentiment was particularly strong in some of the smaller colonies, whose industrial establishments were yet in their infancy. To these infant industries, the policy of preferential trade threatened destruction, since they could not face the competition of the more highly developed manufactures in Victoria and New South Wales.

Some of the protectionist leaders in the smaller colonies took advantage of this fact to turn the preferential program to their own private purpose. Reciprocity, they pointed out, was a matter of bargain. The colonies with the lower tariffs were at a serious disadvantage in dealing with their more highly protected neighbors, since they had little to offer in the way of tariff reductions. An increase in the tariff should therefore be a condition precedent to the negotiation of reciprocity agreements. The colonies would then be on an equal footing, and could make equal concessions. But, unfortunately, this theory did not work out in practice. Every advance in the tariff still further postponed the day of reciprocity. The protectionists clamored for more protection. They had no genuine interest in reciprocity. They had merely used the preferential program as a stalking horse for protection.

The tariff situation was further complicated by the bitter tariff conflict between the two leading colonies. New South Wales was committed to the policy of free trade. Her chief economic interests were with the mother country, and she accordingly refused to sacrifice her most profitable trade to secure trifling advantages from the sister provinces. Moreover preferential trade meant discrimination, and she had no intention of penalizing the mother country, which treated her much more generously than the sister states. Victoria, on the other hand, was wedded to protection. Thanks to her protective tariff, she had succeeded in building up a considerable number of industries. The political influence of these vested interests was such that they absolutely controlled the fiscal policy of the legislature.

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No government could venture to modify the tariff without their consent, and they were unalterably opposed to any program which might endanger the tariff schedules directly or indirectly. The struggle between the colonies thus resolved itself into a battle royal between the principles of protection and free trade; and upon that policy there was no room for compromise.

The preferential policy, it must be admitted, brought out some of the worst features of intercolonial politics. The relations of the colonies were reduced to a materialistic basis. The spirit of federal unity was lost amidst the conflicting demands of local business interests. The fiscal antagonisms of the colonies were as petty and contemptible as the rivalry of the Italian cities in the middle ages. The local governments dealt with the fiscal question in a huckstering spirit. Reciprocity to them was a business proposition. There was no place for sentiment where the interest of their particular colony was at stake. The issue was reduced to one of comparative tariff advantage. In short, the chief result of the preferential movement was to extend the area of protection rather than to promote freedom of trade. Provincialism bred protection, and protection bred retaliation and strife. The preferential policy was no longer a matter of federal or common intercolonial concern, but a mere question of local economic interest.

With the failure of the preferential program, the Australian colonies began to realize that the fiscal problem could not be solved by the local governments and legislatures. From the very nature of the case, the colonial legislatures were prone to approach the question from a provincial point of view. The members were elected on local issues; they represented the particular interests of their several constituencies. Yet the question of an intercolonial tariff was more than a local issue. It was a great federal problem, and as such could only be solved by a federal assembly. Heretofore the Australian colonies had been putting the cart before the horse. They had been dealing with the economic rather than the political aspects of the intercolonial issue. But the constitutional question came first. The policy of federation demanded priority of consideration. A fed-

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eral organization had first to be created before there could be any unification of Australian tariffs or policies. The financial panic of the early nineties brought home to the colonies the economic weakness of isolation and disunion. The rapid development of the spirit of Australian nationalism, together with the danger of foreign complications, served to emphasize still further the manifold advantages of union. The combination of these factors brought about the Commonwealth of Australia. With the unification of the colonies came the solution of the fiscal problem in the adoption of a common federal tariff.

IMPERIAL PREFERENTIAL TRADE

The present day agitation for imperial preferential trade bears many striking resemblances to the Australian reciprocity movement. The same motives, methods, ideals and difficulties are everywhere in evidence. Great Britain stands in much the same relation to the colonies that New South Wales formerly sustained to the Australian group. The same curious complexity of political idealism and economic selfishness is clearly revealed. The battle between free trade and protection is again at issue on a wider field. The whole question of the relation of the mother country to the colonies reappears in a more practical form as the most serious problem of the empire. An economic reorganization of the empire is demanded to correspond with the growing sense of political solidarity. In short, the movement for imperial preferential trade is but a broader expression of the Australian national ideals of 1873. The conception of unity has taken on a higher form. It is no longer satisfied with a mere national expression; it seeks its full fruition in an imperial ideal. But the old practical difficulties in the diverse forms of protective tariffs, Cobdenism, provincial jealousies and conflicting economic interests again block the way to the realization of the imperial ideal.

The imperial preferential movement, like its prototype in Australia, has both a political and economic significance. On its political side it represents the aspirations of the empire for a

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closer bond of union. There is a wide diversity of opinion as to the future organization of the empire, whether it should assume the form of a *Bundesstaat* or of a *Staatenbund;* but imperialists and nationalists alike are agreed in recognizing that a reorganization is necessary and that the fiscal issue is closely bound up with the question of political reconstruction. To many an ardent imperialist it seems that the fiscal question is the crux of the whole imperial problem and that the very existence of the empire is dependent upon the unification of its economic life. Even a few of the nationalist leaders, Mr. Jebb, for example, have adopted the same political principle. To the Tory imperialist of today, as of former generations, the glory of the empire is its strength; and the symbol of its strength is to be found, not in the army or navy alone, but also in the close coördination of its vast economic resources for a common imperial purpose. The preferential policy is looked upon as a stage in the process of imperial consolidation which has already been worked out so successfully in the unification of the Canadian, Australian and South African colonies.

On the economic side, the imperial preferential program is a protest against the cosmopolitan policy of free trade. It seeks to build up a strong self-contained and self-sufficient nation. The imperial tariff reformers desire to free the empire from its dependence on foreign states. Throughout the vast confines of the empire there are sufficient material resources, if properly developed and coördinated, to enable the empire to lead an independent existence without outside assistance. The existing colonial trade, it is admitted, forms but a small proportion of the total trade of the empire; but it is growing rapidly, and in the not distant future promises to become the largest and most remunerative branch of the commerce of the mother country. The self-governing dominions afford almost unlimited opportunities for the expansion of imperial trade. Interimperial trade is equally advantageous to the mother land and to the colonies. The latter are much the largest per capita consumers of English goods; and Great Britain, on the other hand, furnishes the best market for colonial producers. With the gradual closing of

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foreign markets to imperial trade, through the adoption of high protective tariffs, the empire will be forced to depend upon the development of the internal resources and communications of the empire as the primary source of its wealth. Both capital and labor should be encouraged to seek a home within the empire rather than without. In short, it should be the policy of the empire, according to the tariff reformers, to formulate a fiscal policy which would build up the industries of the empire and promote the social and economic unity of its citizens. To this end, the mother land and the colonies should at once proceed to extend the principle of intercolonial preference to the whole empire. A satisfactory beginning has already been made in the case of some of the colonies which have granted a distinct preference to the products of the mother country in their respective markets. But these precedents fall far short of the ideals of the supporters of an imperial preference. The preferential policy of Canada and of the other self-governing colonies has been voluntary in character and limited in operation. In the judgment of the imperialists, the preferential policy should be extended to the whole empire. It should be accepted by England and all the colonies as the fundamental basis of their fiscal relations. By this means alone can the political unity of the empire be transformed into a vital economic organism of world-wide power and influence.

The imperial preferential movement has followed much the same fiscal course as the Australian agitation. At the outset the demand for an imperial preference was based upon the principle of imperial free trade. It was presented by its original sponsors as a free trade measure. The New Zealand government had assumed that the free interchange of goods throughout the empire would be an essential condition of an imperial confederation. The English protectionists at first generally entertained the same idea. One of the objects of the Fair Trade League of 1881 was "to make of Great Britain and her dependencies a vast *Zollverein* within which the principles of free trade should be unhesitatingly recognized." The original proposals of Mr. Chamberlain were directed to the same end. The growth of pro-

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tectionist sentiment in the colonies rendered this program impossible of execution. The colonial governments were actively engaged in fostering the infant industries of their respective provinces and they declined to have anything to do with an imperial policy which would expose local manufacturers to English competition. In the face of this opposition, the English imperialists were forced to change their policy. The protectionists had captured the preferential movement. The resolutions of the Colonial Conference of 1902 reflected the victory of the colonial protectionists over the imperial free traders. "In the present circumstances of the colonies it is not practicable to adopt a general system of free trade as between the mother country and the British dominions beyond the seas." Henceforth the policy of preferential trade in England was tied up with the question of the adoption of a protective tariff. In return for preferential treatment in the colonies, the mother country was called upon to sacrifice her system of free trade.

But by an interesting coincidence the execution of this program was defeated in England, as the similar policy had been in New South Wales, by the complete triumph of the Liberal party in 1906. Sir Henry Campbell-Bannerman came into power pledged to the maintenance of the policy of free trade. England now found herself in the same position in relation to the self-governing colonies that New South Wales had been to the Australian group. She was a free trade nation surrounded by protectionist offspring. The fiscal differences of the empire for the time being were irreconcilable. The mother country refused to give up her free trade principles; the colonies as firmly declined to sacrifice their protective tariffs. There was this difference, however, that England fully recognized the constitutional right of the colonies to determine their own tariff policies and made no effort whatever to force her own fiscal theories upon them, whereas some of the colonial governments could not forbear interfering in English politics by keeping up their agitation for a reciprocal imperial preference. It was now the turn of the colonial protectionists to appeal to the old imperial tradition that there should be one fiscal policy for the empire. The leader-

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ship of the imperial movement had passed from the mother country to the colonies and the movement itself had taken on a distinctly protectionist character. But the British Parliament was by no means indifferent to these momentous changes. It had long ceased to consider itself a true imperial body. It had become a national assembly and as such demanded for itself and its constituents the same liberty and independence of action in fiscal matters that it freely conceded to the colonial legislatures. The British government, moreover, could not overlook the fact that many foreign states were treating the commerce of the mother country with far greater liberality than some of the colonies which were most insistent upon being granted a preference in the English market. The preferential program held out little immediate prospect of a development of British trade with the colonies which would offset the probable loss or disorganization of the foreign trade of the nation. In short, the policy of preferential trade did not hold out to the mother land the same alluring prospects of imperial expansion that it did to the colonies.

The preferential policy was most attractive in theory; it appealed to the patriotism of the empire. But when the imperialists came to deal with the practical aspects of the question, they met the same difficulties that had defeated the Australasian experiment in intercolonial reciprocity. In Great Britain, Mr. Chamberlain's preferential proposal became inextricably mixed with Mr. Balfour's retaliatory policy and the more far-reaching program of the protectionists for a system of ad valorem duties. All these proposals looked towards the adoption of some form of protection. But the protectionists could not agree among themselves as to the form that the proposed tariff should take and as to the countries or products to which it should be applied. The tariff reformers, the free fooders and the landed interests were all engaged in a lively internecine struggle. The Conservative party was wrecked. At the very moment when Mr. Chamberlain was calling on his countrymen to think imperially, a majority of his party were using the imperial campaign for the furtherance of the most selfish national interests.

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English farmers and iron and steel manufacturers did not take any more kindly to Canadian than to foreign competition. The food taxes were the crux of the problem. The workingmen were bitterly opposed to a revival of the Corn Laws, but without such duties the policy of preferential trade would have been a farce. Even Mr. Chamberlain was obliged to qualify his imperial views in the interests of the poorest of the English laboring class. The secretary of state for the colonies struggled desperately against the nationalistic influences of the two extreme wings of the party, the full-fledged protectionists and the arrant free traders; but the particularist forces were too strong for him. He had himself been foremost in appealing to the material interests of the nation, in favor of imperial preferential trade; and now these same interests came back to plague him with their particularistic demands. He had hoped to make protection the sworn ally of imperialism only to find, however, that it was no more the friend of imperial unity than free trade had been. In the end, his splendid imperial idea was lost amid the petty fiscal squabbles of the Conservative party.

The preferential movement in the colonies has experienced many of the same difficulties. In the early stages of the movement, the colonial governments sought to bring about a restoration of the old system of imperial preferential trade, but the free trade government in England would not consider the proposition. The skillful political tactics of Sir Wilfrid Laurier gave a new direction to the movement. He took up the preferential program as a distinctly national policy. The Canadian preference was made to serve a twofold purpose: so far as Canada was concerned it was a measure of tariff reform for the relief of the Canadian agriculturalists and consumers; in its imperial aspects it was a freewill offering to the British nation. The preferential policy was robbed of its sordid imperial aspects. It was no longer presented as a commercial proposition, but was placed on a purely national and voluntary basis. In short, the principles of liberal imperialism were again set up. The policy of an imperial preference was again identified with the two cardinal

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principles of freedom of trade and colonial autonomy. The imperial ideal was generously recognized without a sacrifice of the fiscal independence of any portion of the empire. The success of the Canadian experiment was followed by the adoption of a similar policy in several of the other self-governing dominions. Australia, New Zealand and South Africa all freely extended a preference to the mother country without demanding a *quid pro quo*. The policy of Sir Wilfrid Laurier reaped its own reward in the rapid expansion of intraimperial trade and the growing sense of social and political solidarity throughout the empire.

One of the most important results of Sir Wilfrid Laurier's policy was the abrogation of the Belgian and German *Zollverein* treaties. The English Parliament, as we have seen, had long since lost control over the tariff policies of the colonies. But there was still the royal prerogative with which the colonies had to reckon. The crown still held an effective veto over the colonies in the form of the treaty making power; and the English government did not hesitate to exercise this power for the promotion of imperial free trade. By the treaties of 1862 and 1865 with Belgium and the *Zollverein,* respectively, it was provided that the products of these countries should not be subject in the British colonies or possessions "to any other or higher export duties than the products" of Great Britain. In short, the colonies could not grant a preference to the mother-land even if they so desired; they were effectually bound to the chariot wheels of the foreign office. Against this humiliating position the colonies more than once protested, but without avail. The statecraft of Sir Wilfrid Laurier, in granting a voluntary preference to the mother country, forced the hand of the British government. The obnoxious treaties were abrogated under the combined pressure of imperial public opinion and a gentle intimation of a possible withdrawal of the Canadian preference. In theory, at least, it was a great imperial victory. The empire was liberated from the baneful domination of an international creed; it was free to give expression to its own conceptions of unity. The day was not far distant, it was thought, when the

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economic interests of the empire would be bound together by a series of preferential agreements. The sentimental unity of the empire would be strengthened by material considerations of greater and more permanent value.

But the hopes of the imperialists sadly miscarried. What at first had appeared to be an imperial victory turned out to be a nationalistic triumph. The former mercantilist and free trade policies had looked upon the empire as a fiscal unity, and in accordance therewith had laid down a uniform policy for all its ports. The preferential policy, on the other hand, has emphasized the independent existence of the different divisions of the empire by endowing the colonies with a limited interimperial treaty making power. In their fiscal relations to one another they have appeared, not as common members of one body politic, but as separate and distinct states with divergent national interests. It is not surprising under the circumstances that some of the colonies soon proceeded to turn their new imperial freedom to distinctly national purposes. Some of the colonies entered into preferential relations with one another from the advantages of which the mother country and sister colonies were excluded. The preferential policy proved to be discriminatory in operation. The original idea of the commercial unity of the empire was largely lost sight of in the general competition of the colonies to push their trade as much as possible at the expense of their fellow citizens in other parts of the empire.

The Canadian government was not satisfied with the concession of the power to enter into interimperial preferential relations. It aspired to complete colonial autonomy and demanded the right to enter into preferential agreements with foreign states. The most favored nation treaties of the mother land effectually barred the way. The reciprocity agreement with France afforded the most convincing evidence of the necessity of getting rid of these irksome imperial restrictions upon the commercial freedom of the colonies. The Australian Commonwealth had just encountered similar difficulties in attempting to restrict the preferential treatment of British products to

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goods which were carried in British ships. Sir Wilfrid Laurier took advantage of the situation to present a resolution at the imperial conference in 1911 for the exemption of the colonies from the operation of the most favored nation clause treaties with foreign states. Sir Edward Grey accepted the proposal and promised to take the necessary measures to secure the abrogation of the obnoxious provisions. The British imperialists were suspicious of this nationalistic tendency which in their judgment threatened the commercial unity of the empire. This suspicion was transformed into hysterical alarm when, a short time after, the Laurier ministry entered into a tentative reciprocity agreement with the United States and submitted it for the consideration of the Canadian parliament. The imperialists now found that their materialist arguments were turned against themselves and they fell back once more on the old and much despised appeal to imperial sentiment. With a charming disregard of historical facts, the Chamberlain tariff commission declared: "The Reciprocity agreement for the first time in our history would establish a discrimination in favor of one state of the empire against the United Kingdom and the rest of the empire. Such discrimination has always been declared to be incompatible with imperial unity." Thanks to this patriotic appeal, the reciprocity agreement was defeated; but the danger of a revival of the demand for a larger treaty making power has by no means disappeared. The nationalistic parties in the colonies will never rest content until the colonies have been placed upon an absolute equality with the mother country in commercial as in all other matters.

One of the chief difficulties of the imperialists has arisen from the opposition of the colonial protectionists to any measure of genuine tariff reform. From the very beginning the Canadian protectionists fought Sir Wilfrid Laurier's policy of a voluntary preference. They objected to it on the ground that it provided for no reciprocal concessions on the part of Great Britain, but they opposed it even more strongly because it involved a material reduction of the local tariff on British manufactures. The same protectionist spirit has been equally manifest in the

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other colonies. In the Australasian dominions the protectionists have succeeded in defeating all measures for a reduction of the tariff on imperial products. The preferential policy has there taken the form of an increase of the tariff on foreign goods. This concession has undoubtedly been of considerable value to the English manufacturer in competing with his American or European competitors; but it has afforded him no relief from the customs burdens which are imposed upon his goods in the interest of the local producer. The colonial tariff on many articles was so high as to exclude the English manufacturer from the colonial markets. It was little satisfaction, under the circumstances, for the British trader to know that he was better off than the foreign manufacturer. In short, the value of the preference was dependent upon the liberality of the fiscal policies of the self-governing units of the empire.

Many of the colonial protectionists were the stanchest imperialists in constitutional matters and on questions of defense or foreign policy, but on fiscal questions they were the most narrow-minded of provincialists. Their imperialism did not extend to their pocketbooks. They objected to any form of preference which involved a reduction of the local tariff. They came forward as the vigorous champions of colonial manufacturers and workingmen against the hostile invasion of the cheap labor products of Great Britain. To the sister colonies they extended the same hostile treatment. They have been the bitterest opponents of the efforts of the colonial governments to bring about a preferential agreement between several of the colonies. The governments of Australia and New Zealand, and of Canada and Australia, have been carrying on reciprocity negotiations for years, but without success. The protected interests in the several colonies have combined to defeat any impairment of their special fiscal privileges. The selfish interests of the protectionists have proved too strong for the imperial spirit of the people. The empire has been transformed into a hostile group of competing states.

The fiscal relations of the empire are chaotic indeed. "Today, for example," as Professor Skelton points out, "in Canada,

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New Zealand has a preference, Australia has not; in New Zealand, South Africa has a preference, Australia has not; in Australia, South Africa has a preference, Canada and the United Kingdom have not." The principle of an imperial preference is accepted in theory; it is disavowed in fact. Every proposal to bring about an interimperial "most favored nation" agreement has signally failed. The broad-minded enthusiasm of the colonial delegates at the imperial conferences has soon disappeared in the unfriendly atmosphere of the local legislatures. The delegates have been made to feel very speedily that their primary obligation was to their respective colonies rather than to the empire at large. The resolutions of the imperial conferences have been quietly consigned to the ministerial waste paper baskets. In short, the jealousies of the local legislatures and the selfishness of vested interests within the several colonies have nullified all the efforts of English and colonial statesmen to bring about a commercial union of the empire or a general preferential agreement.

The external fiscal relations of the empire are equally unsatisfactory from an imperial standpoint. The self-governing units of the empire have felt free to enter into treaty agreements with foreign states which are quite incompatible with the idea of the fiscal unity of the empire. The commercial treaties of the mother land, for example, are never extended to the colonies unless the latter are expressly included. Great Britain thus enjoys "most favored nation" treatment in many other states by reason of special tariff concessions. From these commercial advantages the colonies are often excluded. The self-governing dominions are generally entitled to share in these fiscal privileges, on signifying their desire to become parties to the agreement. Since they are free to choose for themselves, they have no occasion to complain if they find themselves in a less fortunate fiscal position than the mother land in a particular foreign market. Canada, for example, has adhered to the Anglo-Japanese commercial agreement; whereas Australia has declined to do so. The colonies have also claimed and exercised the right to enter into commercial agreements with foreign states.

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Canada has concluded fiscal agreements with France and Japan under the terms of which reciprocal concessions are made by both parties to the products of the other. Australia, New Zealand and Newfoundland have all carried on negotiations directly or indirectly with foreign powers for reciprocal tariff concessions. In brief, the treaty making power has been used, as have the other fiscal powers of the colonies, for purely national purposes. It has been a phase of a general "national policy" in fiscal matters.

At present the imperial preferential policy, like the Australasian preferential program, has turned out to be essentially a nationalistic and not an imperial policy. It has been diverted from its original liberal fiscal principles into an instrument of protection. It has aimed at the promotion of special colonial interests rather than at the furtherance of the general commercial welfare of the empire. So far as it has had distinctly imperial ends, it has sought to bring about the fiscal unity of the empire by a policy of bargain and sale. It has appealed to the material interests and not to the underlying spiritual ideals of the nation. Some of the unfavorable results of this policy have already appeared in the strange confusion of interimperial tariffs and an unfortunate attitude of suspicion and estrangement among the colonies in their fiscal relations to one another and to the mother country. In view of the past experience of the colonies, it is safe to assert that as long as the spirit of protection is dominant throughout the colonies there can be little hope for a genuine system of preferential trade in which the commercial unity of the empire will be recognized within the empire as well as in relation to the outside world.

The failure of the Australasian and imperial preferential experiments points to the conclusion that the unity of the empire can scarcely be attained by an appeal to material interest. Of all the ties that can bind an empire together, a bond of trade is essentially the weakest because it is at once the least patriotic and the most cosmopolitan. Commerce pursues its own selfish interests; it respects neither persons nor nations. The Canadian Tories of 1849 were the most devoted of imperialists so long as

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they enjoyed a preference for their products in the mother country. But when that preference was withdrawn, they were quickly transformed into the most arrant annexationists. When it no longer paid to be loyal, their loyalty petered out. The same sordid danger confronts every attempt that may be made to build up a permanent constitutional organization of the empire upon the basis of reciprocal commercial advantages or fiscal compacts. The history of the nineteenth century has borne full witness to the fact that a sense of the social and spiritual unity of a people, and not a materialistic conception of self interest, has been the deep inspiration of every national and federal union. The economic element has undoubtedly played a part, but it has been a minor part in these great national dramas. The consummation of the great colonial federations has exemplified the emergence of a new national consciousness; it has marked the triumph of the spirit of colonial nationalism over the particularistic interests of the several states. The future unification of the empire, it is safe to predict, will depend upon the development of a similar spirit of social and political solidarity throughout the empire.

To this unification, the policy of preferential trade has had little or nothing to contribute. In practical operation, the preferential program has resulted in frequent economic friction between contracting colonies. The several colonial governments have not hesitated to repudiate at will their treaty obligations whenever the claims of the local treasuries or the clamors of local protectionists appeared to render a change of policy desirable. The imperial preferential policy has succeeded in promoting a closer union of the empire only in so far as it has taken the form of a national freewill offering, rather than of reciprocal bargain or contract. In truth, the experience of the colonies seems to cast grave doubt upon the possibility of effecting a federation of the empire through the agency of any economic policy short of an imperial *Zollverein*. An examination of the history of the formation of the American union and of later federations lends confirmation to this opinion. In all these cases, the fiscal unification of the states has been brought

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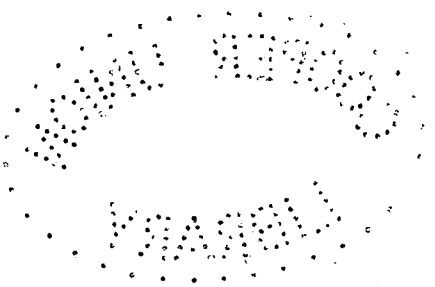
about by a common legislative body. It has been the product of law and not of contract. The sacrifice of the fiscal independence of the several states has been the necessary prerequisite to commercial and political unification. This is the price which the colonies, likewise, will be called upon to pay, if they decide to enter an imperial union. The question now is: Are they prepared to pay the price? The answer to the question has been postponed until the conclusion of the war. When that day comes, the statesmanship of the empire will be put to the severest test. The empire must choose between the policies of nationalism and imperialism, and the crux of that problem is the fiscal issue.



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GEOGRAPHY AND THE GERRYMANDER

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The gerrymander is an American name for a political abuse, which, though by no means exclusively American, has been most widely practiced and generally tolerated in this country. It is a device for the partial suppression of public opinion that simulates agreement with democratic institutions. The subterfuge, therefore, has no place in countries in which oligarchic control is legitimized. Nor is it suited to European conditions, because it is difficult there to shift electoral boundaries. European electoral units in large part have a clearly defined historical basis, which in turn rests upon geographic coherence. This solidarity is commonly so great that it cannot be disregarded. American political divisions on the other hand show in major part very imperfect adjustment to economic and historic conditions, largely, because many of the divisions were created in advance of such conditions. They are, in the main, not gradual growths, but deliberate and arbitrary legislative creations, made without adequate knowledge of the conditions that make for unity or disunity of population within an area. Political divisions tend, therefore, to be less significant than in European countries and to be regarded more lightly. It is in particular the smaller unit, such as the county, that has been manipulated for electoral purposes. In spite of their poorly drawn individual boundaries, groups of counties can be organized into larger electoral units in such a manner as to represent a common body of interests predominating. On the other hand they can be so arranged as to mask these interests. The lack of proper coherence in the individual county may be rectified in large measure in the group, or it may be intensified. Gerrymandering accomplishes the latter result.

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For more than a century, voting districts have been arranged from time to time so as to develop to maximum effectiveness the strength of the party in power and to render impotent the opposition groups. There is little abatement of the practice in evidence today. Few states are without gerrymandered districts of some sort. No party in power has refrained from the gerrymander. The analysis of congressional districts on the following pages is in no sense a partisan argument. It is solely the accident of numerical superiority that determines which party is the offender and which the victim.

Various remedies have been proposed, but apparently none has taken adequate account of the necessity of adjustment along geographic lines. Denunciations of the system and appeals to the conscience of the legislator are not solutions. The difficulty is largely in determining what constitutes a fairly arranged voting district. Definitions of the gerrymander are peculiarly vague on this critical point. Webster speaks of an "unfair and unnatural" division. The *Encyclopaedia Britannica* calls it an arrangement which gives "an unfair advantage to the party in power." A student of the subject[1] says the district must be "formed intentionally in a particular manner for partisan advantage." All of these definitions fail to show wherein lies the wrong of the gerrymander. The purpose of this article is to show the gerrymander to be a violation of the geographic unity of regions and to indicate the possibilities of equable representation by reorganizing electoral districts on a geographic basis.

A region of geographic unity is one in which conditions of life are in general similar because of similarity of environment. The people have the same common interests. Certain occupations are dominant. Social institutions show a large degree of uniformity. Public opinion is easily determinable. Quite commonly also the people of such an area have a common history, as geographic factors have in most cases been most potent in determining time and manner of settlement of the region. As time goes on this regional individuality usually continues to develop in some respects, if not in all. Past and present, therefore, combine to give to such an area a definite political attitude. The interests

[1] Griffith, E. C., *Rise and Development of the Gerrymander.*

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of representative government demand that such a crystallized opinion be given a voice, that it be not concealed by the division of the natural unit and its distribution among other districts of different interests and opinions.

If this be granted, the determination of unit geographic areas becomes a matter of political importance. The amount of divergence of electoral boundaries from geographic boundaries is thus a measure of their fairness.

In the determination of natural areas the chief factors involved are (1) location, especially as concerns accessibility from other sections; (2) topography, especially as determining character and position of lines of communication, and as affecting the type of use to which the land is put; (3) soils; (4) drainage; (5) mineral resources. Climate is not commonly a differentiating factor for areas involving only a small part of a state. It does become such a factor, however, in the extreme west of the United States. The existence of a unit geographic area depends as a rule upon a combination of these factors which set it off from adjacent regions. Most geographic regions are separated, not by sharply drawn boundaries, but by transition zones of varying width. Similarly the degree of contrast between regions may vary greatly.

To test the relation of political attitude to geographic conditions three "border" states—Missouri, Kentucky, and Tennessee— have been selected, in which historical and economic contrasts are strong and in which the two parties are of nearly equal strength. The voting unit subjected to scrutiny is the congressional district. The state is first separated into its geographic components. The political attitude of these subdivisions is next determined and, when possible, an explanation given. The divergence of geographic and congressional boundaries is noted and the extent to which natural units are masked thereby in the election returns. This is the specific test proposed for the determination of gerrymandered conditions. Finally, the attempt is made to show that congressional districts can be so rearranged that they will correspond in the main to natural divisions, and that this redistricting may give to each party approximately its proper representation.

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A redistribution of this sort will supply a satisfactory solution for the gerrymander. It has the advantage over the remedy commonly suggested, the election of congressmen by the state at large, of preserving the individuality of the congressional district. Not only are the qualifications of the candidate better known to an individual district than those of a group of candidates to the entire state, but the district retains the means of direct expression of its opinion in the national assembly. Areas of strong partisan attitude would thus be given a voice, and in areas of mixed sentiment the lines of demarcation would be drawn on the fair basis of unity of interests. In time districts of the latter sort should develop a definite political attitude. Because of the uniformity of conditions within a geographically organized district, it should grow in solidarity as time goes on, with an effective body of public opinion as the result. Districts, once properly established, will become permanent in their major features. Marginal readjustments will of course take place from time to time, to meet the changing population requirements of congressional allotments. The nuclear area, however, embodying the dominant attitude of the district, will remain undisturbed. When present party alignments cease to satisfy, for they are based more largely on tradition than on fact, the realignment should take place between districts which are geographically determined, not within such districts.

Only the two major parties are here considered, as the minor parties are negligible at present within the states mentioned. The strength of the two parties is derived from the votes cast in the latest election for governor. Congressional elections are of little value in arriving at an estimation of party strength. In most congressional districts, as matters stand, the result of the election can be foretold, and a considerable part of the discouraged minority does not vote, or votes merely in the primary of the other party. The last presidential election brought to the fore issues of foreign policy. The normal strength of the parties was well shown, however, in all three states by the elections for governor, and is closely checked by the vote cast for the other state officers. In every instance, the minority party is sufficiently strong to bring out the full strength of both parties.

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MISSOURI

Missouri is a state of strong but in general not of abrupt geographic contrasts. North Missouri consists principally of prairie farms; the greater part of southern Missouri is in the Ozark Highland. Few midwestern states show as great diversity of economic conditions. Dividing lines, however, are not sharply drawn in most places and transition zones may exceed the width of a county.

A convenient line of division between north and south Missouri is the Missouri River. This line is commonly employed and finds expression in the boundaries of a half-dozen of the present congressional districts (fig. 2). However apparent on the map, this line does not exist as one of geographic contrast. Politically and economically it has been and still is a median line, not a frontier. In the settlement of the state the most important movements of population have been up the Missouri River. A tongue of settlement extended across the state on both sides of the river even before all of the eastern border was occupied. The most important early rural settlements of the state were made in the Boonslick country, on both sides of the river, in what are now roughly Howard, Cooper, and Saline counties (fig. 2). This line of expansion of settlers of Southern stock is still expressed politically by the fact that the stronghold of Missouri's Democracy is located in these central counties. It is to be noted also that the Missouri River counties, because of their settlement by slaveholders, still contain the highest percentages of negro population (fig. 1). After 1830 a large German immigration was directed to Missouri and, as in the previous case, it moved up both sides of the Missouri Valley. It began in the lower river counties and there displaced almost entirely the older Southern stock. The lower river counties, because of their German stock, are the strongest Republican districts of the state. In all the history of the state the Missouri River has served as a most powerful bond between the counties situated along its course. This historical influence is still strongly shown in the character of the population of the river counties and in their political attitude. Railroads and roads were built parallel

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to the river, chiefly because of the early concentration of population here, and increased the coherence of the river counties. Five major railway lines run parallel to the Missouri through the counties adjoining the river, whereas a single north-south branch line runs in the opposite direction (fig. 4). The oft-proposed creation of a deep waterway between Kansas City and St. Louis would restore the direct value of the river as a highway.

The influence of the Mississippi River has been similar, though less pronounced. Settlement proceeded up its valley and outward from it. There is an especially marked similarity in the population of the Mississippi River counties above St. Louis. Those below constitute another unit group. Any just political classification, therefore, must accept the historic unity of the regions along the two great rivers of the state, especially since this unity is still most potent in determining political sympathies and economic interests. This idea must be fundamental to any subdivision of the state.

Topographically, three major divisions are recognizable (fig. 1), the plains of northern and western Missouri (I and II), the Ozark Highland (III), and the Southeastern Lowlands (IV). The plains area falls into two divisions, northern Missouri (I) and the Osage Plains (II). The plain of northern Missouri includes all of the northern part of the state, has a rather monotonous, gently rolling surface, and its soils are derived in the main from glacial materials. The greater part of the surface is covered by glacial clays and clay loams, similar to those of Iowa; along the Missouri River are important areas of rich loess lands. This area constitutes by far the largest section of good farming land in the state, and is almost purely agricultural in its interests. The Osage Plain has a smooth surface formed by the wearing down of the soft rocks that underlie it, and has soils that are residual from these rocks. It is fair to good farming country, rather advanced in development. The Ozark region consists (a) of a central highland (III), which is in the main traversed with difficulty, and parts of which are extremely rugged in topography and poor in soil; and (b) of border areas that slope

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away towards the adjacent plains and merge into them gradually. Of the latter, the Springfield Plain (IIIa) is the richest and most highly developed. It has, in major part, a smooth surface, and it includes the rich zinc and lead areas of the Joplin

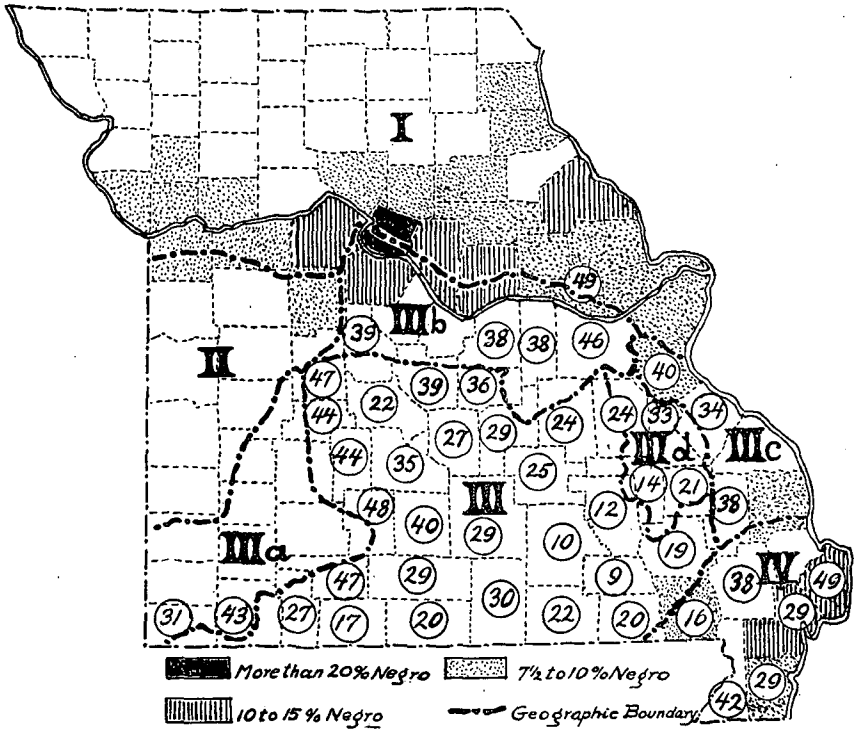

FIG. 1. GEOGRAPHIC DIVISIONS OF MISSOURI

I, Plain of North Missouri; II, Osage Plain; III, Ozark Highland (central portion); IIIa, Springfield Plain (western Ozark border); IIIb, Missouri River border of Ozarks; IIIc, Mississippi River border of Ozarks; IIId, St. François Mountain Region; IV, Southeastern Lowlands. Counties possessing less than 50 per cent of total surface in improved farm lands are designated by circles. Figure in circle indicates percentage improved in 1910.

region. It is well settled, well supplied with means of transportation, and contains numerous towns. The Missouri River border (IIIb) has a ridge and valley topography, most pronounced in the eastern part. Most of the ridges have second-

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rate farming tracts upon them. The valleys have an excellent soil. Between are forested or pastured slopes. Fair farming conditions prevail. The situation in the Mississippi River border (IIIc) is similar, conditions here improving southward. Neither of these border areas has any great mineral resource. The St. François region (IIId) consists of rugged knobs of crystalline rock, towering above rich limestone basins. In the latter the greatest lead mining district of the country has developed. The counties of least agricultural development lie in this last district and in the Ozark center (fig. 1). The Southeastern Lowlands (IV) are alluvial accumulations, on a huge scale, of the Mississippi River and its tributaries. The land is superbly fertile, but most of it is available for agriculture only after extensive drainage. Covered originally by hardwoods and cypress it is now being devoted to cotton and corn culture. The older counties, on the Mississippi River, have a rather large negro population. This section is the youngest part of the state in point of development, and is increasing at present more rapidly in wealth and population than any other part of Missouri.

Present party lines in Missouri were drawn at the time of the Civil War or before it, at least in a general way. Southern stock means Democratic allegiance; northern, Republican. Northwest Missouri (fig. 2) is curiously mixed and represents the mingling of the old southern influence which came in by the Missouri River, and of the northern immigration across the prairies of Illinois and Iowa. The Mississippi River border of the Ozarks, like that of the Missouri, is Republican due to German immigration. Ste. Genevieve County alone remains Democratic. Its older French Catholic population attracted German immigrants of the same faith, who are, in Missouri, for the most part, Democratic. The Republican character of the major part of the Ozarks is analogous to the Republican nature of the hill districts of Kentucky and Tennessee, and the settlement was effected in large part by the same stock, reinforced later by small farmers from northern states. In the eastern Ozarks, in the roughest hill districts of the state, the Democratic party dominates. The amount of land that can be farmed here

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is small but the land is in general of good quality, consisting of limestone basins and alluvial bottoms. These limited tracts, near the Mississippi, were taken up at an early date by settlers of Southern stock. The extreme roughness of the hills restricted the development of typical hill settlements, and the control

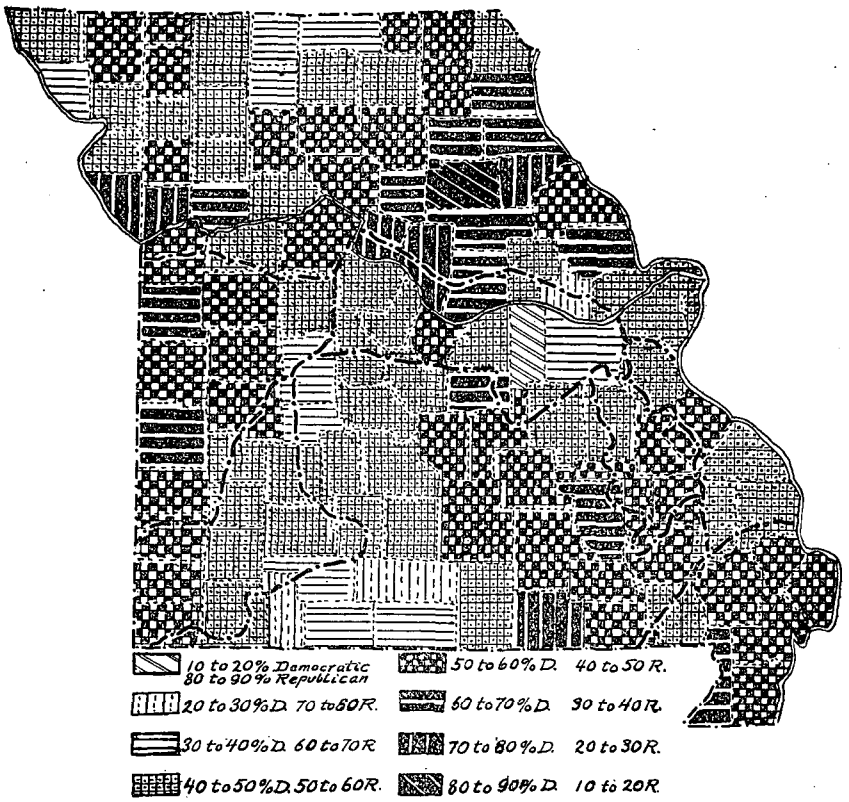
10 to 20% Democratic 80 to 90% Republican
20 to 30% D. 70 to 80 R.
30 to 40% D. 60 to 70 R.
40 to 50% D. 50 to 60 R.
50 to 60% D. 40 to 50 R.
60 to 70% D. 30 to 40 R.
70 to 80% D. 20 to 30 R.
80 to 90% D. 10 to 20 R.

FIG. 2. DISTRIBUTION OF DEMOCRATIC AND REPUBLICAN VOTE IN MISSOURI
Based on vote for governor in 1916

rests therefore still with the old valley settlements. The Democratic character of the southwestern counties (Osage Plain) is evidence of their settlement at an early date via the Missouri Valley. In part it is also the result of a return movement of Southerners from abolitionist Kansas. The present day distri-

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bution of political parties in Missouri rests upon the history of settlement of the state. This in turn depends upon geographic conditions. The earliest immigrants were Southern, brought their Democratic faith with them, and having the pick of the state, established themselves on the most accessible and most desirable areas. The later immigrants were largely Republican, but of different types: (a) Prosperous farmers from the prairie states came into northern and northwestern Missouri; (b) the mountaineer of Kentucky and Tennessee moved into the Ozark Highland; (c) the German immigrant displaced the older settlers from the lower Missouri River district. The balance is still shifting in favor of the Republican party, especially in the Southeastern Lowlands, which are receiving numerous farmers from the north.

The vote for governor in 1916 gave the Democratic candidate 382,295; the Republican, 379,692 ballots. In the last five presidential elections the Republican party has carried the state twice, and in 1912 the combined Republican and Progressive vote exceeded the Democratic vote. Out of 16 seats in Congress, however, the Republicans control 2, the Democrats 14. Apparently, the gerrymander has been employed to good advantage. The map of the congressional districts (fig. 3) shows immediately two that are atrociously gerrymandered, the 7th and 14th. The 7th in fact might almost be said to involve a gerrymander of all southern Missouri. The Democratic stronghold of the old Boonslick country checkmates the Republicanism of the Ozarks in this district. It drives a long wedge into a solid Republican district and makes easy the distribution of the Republican remnants on either hand among other Democratic districts. No argument of common origin or economic interest can be advanced to justify placing the voter of Howard in the Boonslick in the same district with the citizen from Greene in the Ozarks. It is worthy of note that the old Democratic stronghold between the Missouri and Mississippi rivers is distributed among five congressional districts and that these are all safely Democratic as a result. Populous Boone by a heavy Democratic vote overcomes the Republican pluralities of the Ozark counties south of

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the river. Monroe, Randolph, and Chariton assure the outcome in the 2d district, as do Marion, Lewis, and Shelby in the 1st. In the 9th the heavy vote of Audrain, Ralls, Callaway, and Pike is needed to counterbalance the Republican ballots of the German counties of the lower Missouri. In thus safeguarding the Democracy of Missouri the lines are drawn not around, but across

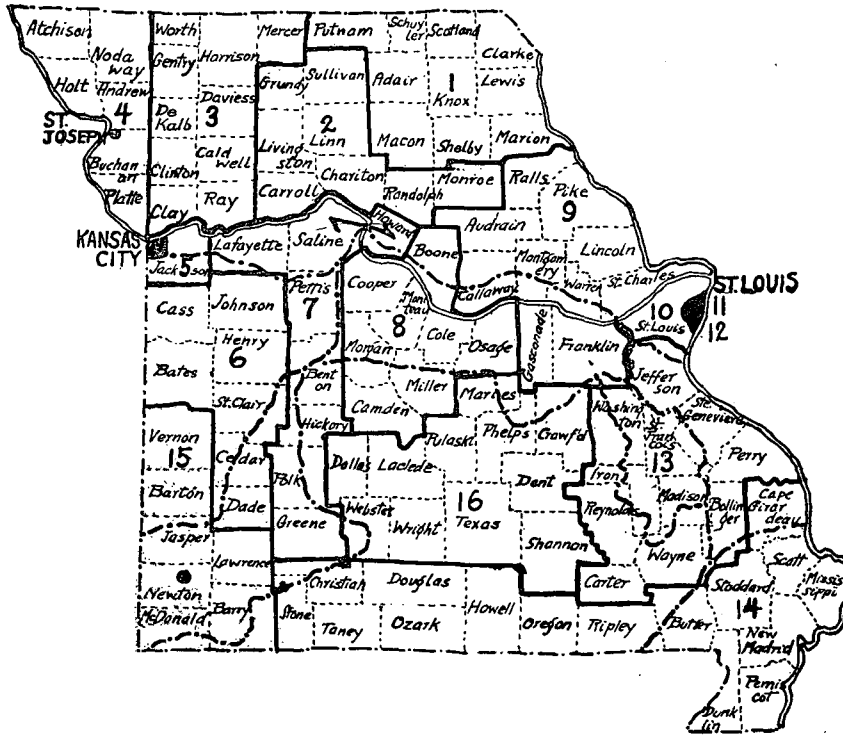

FIG. 3. CONGRESSIONAL DISTRICTS IN MISSOURI

areas of common interest and tradition. North Missouri therefore may also be said to be gerrymandered. Along the Arkansas border, the 14th district pairs the cotton farmer of the Southeastern Lowlands with the native of the remote White River hills in Stone and Taney counties, most Ozarkian of the Ozarks. A more ill-matched group would be hard to find. There is not even direct communication between extremities of this district.

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To get from northern Dunklin County to Taney County, for example, it would be necessary to go to St. Louis (passing through Illinois), thence to Springfield, transferring there to a third railroad after making a circuit of half the state and going through a neighboring state.

The gerrymander may also be based upon inequality of size of electoral districts. The population in 1910 of the congressional districts of Missouri was as follows (figure in parentheses indicates value of individual vote in district on basis of a normal value of one in a district of average population, 205, 833):

1.....174,971 (1.18)	6.....150,486 (1.36)	12.....149,390 (1.37)
2.....171,135 (1.20)	7.....218,182 (0.94)	13.....167,188 (1.23)
3.....159,419 (1.29)	8.....142,621 (1.51)	14.....296,316 (0.59)
4.....179,707 (1.14)	9.....190,688 (1.07)	15.....226,374 (0.90)
5.....283,522 (0.72)	10.....416,389 (0.49)	16.....163,280 (1.26)
	11.....203,667 (1.00)	

One vote in Boone County is as effective as three in St. Louis County or in a part of St. Louis City. The 10th district is incontestably Republican. It has therefore been allowed to include as many Republican voters as possible. The 14th district, if terminated at the west by Ripley County, would be the equivalent of the Southeastern Lowlands, and would have the normal population of a Missouri district. The district, as thus constituted would be strongly Democratic. Accordingly we find the gratuitous addition of seven Ozark counties, including five of the most solidly Republican counties of the state. The result is a small but usually safe Democratic majority. These oversized districts are compensated for by others of small population, as the 8th and 16th, which could not be enlarged readily without endangering their Democratic status. By these nice adjustments of size and boundary the Democratic party has stretched an exceedingly slight majority to a control of seven-eighths of the seats in Congress.

In figure 4 the congressional districts are cut on geographic patterns in so far as geographic districts can be harmonized with the normal population requirements. If party alignment is related to economic conditions, the result should divide the districts fairly among the two parties.

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Perhaps the strongest economic and social contrasts are between the large cities and the rural districts. Missouri has two cities, St. Louis and Kansas City, exceeding the population of an average congressional district—205,833, in 1910. St. Louis, with a population of 687,029 in 1910, is entitled to three full congressional districts. Kansas City, with 248,381, should constitute a

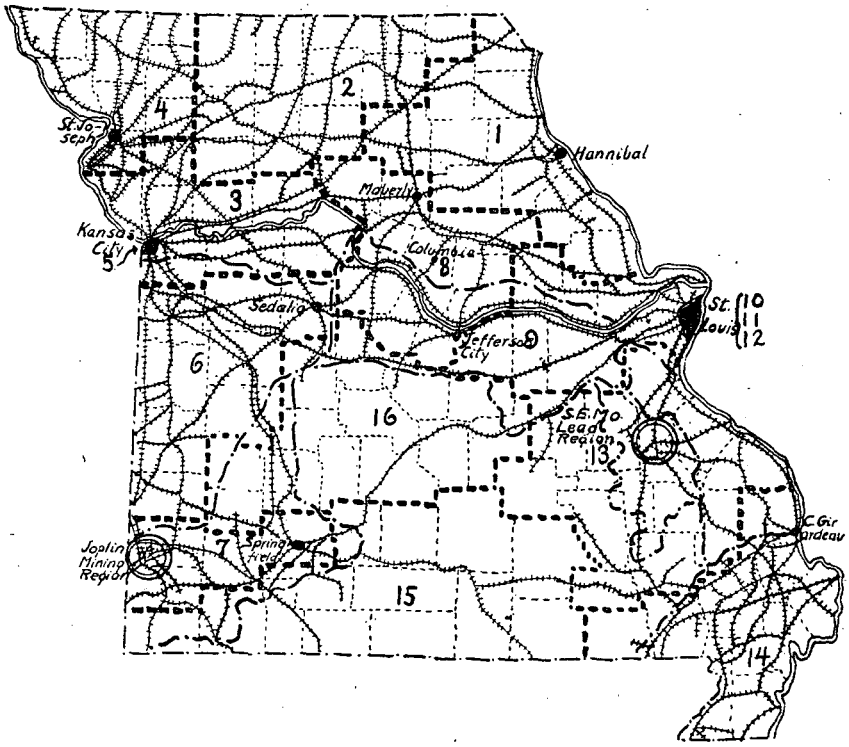

FIG. 4. GEOGRAPHIC REARRANGEMENT OF CONGRESSIONAL DISTRICTS IN MISSOURI

district without the addition of the rest of Jackson County. If, on the basis of the census of 1910, four full congressional districts were created out of these two cities, the average population of the remaining districts of the state would be reduced to 196,494. That of the four urban districts would average 233,850. This disparity in size is counterbalanced by the greater number of aliens and other nonresidents among the city population.

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In the rearrangement of the rural districts, recognition is given first of all to the unity of the Missouri River counties. Below Kansas City, these may be grouped readily into three districts. The eastern district (9 in fig. 4) is in most intimate touch with St. Louis, all important connections being with that city. It has more rough hill land than the more westerly sections, and farming conditions are somewhat less good, at least until dairying is introduced. The people are predominantly of German descent, primarily grain farmers. The western district (3) is similarly related to Kansas City, consists of excellent glacial prairie, loess, and alluvial lands, of smooth surface, and is an important producer of cattle, hogs, and corn. The central river district (8) includes the heart of the Boonslick country and the old settlements to its northeast. It is equally well connected with St. Louis and Kansas City, but has also important commercial relations with Chicago. This area by location and tradition is the heart of the state, inhabited by the oldest and proudest Missouri stock, and seat of the state capitol and university.

The unity of the Mississippi River counties is preserved in district 1, with Hannibal as central city. The prairie counties of northwest Missouri are similarly centered about St. Joseph (4). The remainder of northern Missouri (2) forms a compact district, with similar agricultural conditions, and without a dominant center of population or line of communication.

In southern Missouri the Osage Plain (6) is of exactly the proper size to constitute a congressional district. The Southeastern Lowlands, by the addition of a bit of the adjacent upland, furnish another (14). As Cape Girardeau owes its importance to this section, it is quite properly placed within the lowland district. The four populous commercial and mining counties of the southwestern Ozark border form a district (7) in which urban influences prevail. There remain the northern part of the Ozarks proper (16), the southern Ozark counties (15), and the eastern Ozarks (13). The last is a complex area, made up of a number of smaller areas. It is, however, fairly well connected by railroad lines, and economically is partially dominated by the St. François lead mining region.

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By this classification compact districts have been secured, with a maximum accessibility of counties to each other, and due regard has been given to economic and historic bonds. No attention was paid to securing a proportionate representation of the two parties. Nevertheless such a result is secured, as shown by the following table of the normal results of congressional election in the districts as thus constituted:

1. Democratic.	Majority.....10,000	9. Republican.	Majority.....13,000
2. Republican.	Majority..... 4,000	10. Republican.....	
3. Democratic.	Majority..... 8,000	11. Democratic.....	
4. Republican.	Majority..... 4,000	12. Republican.....	
5. Democratic.....		13. Democratic.	Majority..1,000 to 0
6. Democratic.	Majority..... 4,000	14. Democratic.	Majority..... 4,000
7. Republican.	Majority...1,000 to 0	15. Republican.	Majority..... 3,500
8. Democratic.	Majority.....10,000	16. Republican.	Majority..... 3,500

On a strictly partisan election the congressional representation would be evenly divided. Ordinarily, the Democrats would have a slight advantage. Under favorable circumstances one party might gain 10 to the other's 6. In this rearrangement of districts the maximum deviation of population from the normal population of a Missouri district does not exceed 6 per cent (census of 1910).

KENTUCKY

The state of Kentucky constitutes in essence part of a slope that leads up to the crest of the Cumberland sector of the Appalachians. From the mouth of the Tennessee River to the Virginia boundary the land rises steadily. The result is that the higher eastern portion of the slope, by dissection, has assumed mountainous characteristics and is commonly called the Mountains of Kentucky (fig. 5, IV), whereas the western portion (II) is hilly, or merely rolling. Evidently no sharp line separates these two areas, however strong their contrast of surface and economic conditions. Several tiers of counties in fact constitute a transition zone, in which, as one goes westward, the hills gradually decrease and the prosperity of the inhabitants even more gradually shows improvement. A rude dividing line may be drawn west of the headwaters of the Cumberland River.

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The map (fig. 5), in terms of percentages of improved land, expresses the change in roughness of country along this line. In the western area, the coal horizons, characterized not only by their mineral fuel but by distinctive topography and soils, may be set apart (IIb). Within the great northward bend of the Ohio lies the Blue-Grass (III) limestone lowland, separated from the highlands to the south by a double rim of rocky escarpments.

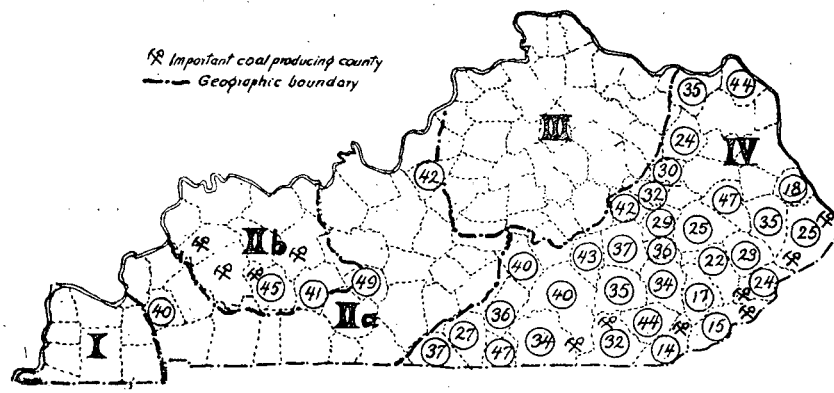

FIG. 5. GEOGRAPHIC DIVISIONS OF KENTUCKY

I, "Purchase" or Mississippi Lowlands; IIa and IIb, upland areas of western Kentucky, predominatingly limestone hills, IIb being "Coal Measures" area; III, Blue-Grass Lowlands; IV, "Mountains" of Kentucky, in reality a much dissected plateau. The circles indicate counties with less than 50 per cent of their total surface improved land, the numbers showing the percentage improved.

At the extreme west is a bit of the great alluvial Mississippi lowlands, known in Kentucky as the "Purchase" (I). Mountaineer, Blue-Grass country squire, tobacco grower of the western section, these are a few of the contrasted types included in the term Kentuckian.

The topographic relations of political parties are obvious (fig. 6). The rich Blue-Grass and Purchase lowlands are centers of Democratic strength. In the fastnesses of the "Mountains" the Republican vote rises in two instances to more than 90 per cent of the total. The richer, smooth portions of the western uplands are in general Democratic, as are the alluvial areas of the Ohio, Cumberland, and Tennessee rivers. The area controlled

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by the Republican party is considerably larger than that in which Democratic strength is dominant, but the greater populousness of the Democratic districts gives to them a slightly greater voting strength. At the present time the Republican congressional districts are two out of eleven, the 10th and 11th (fig. 7), both located entirely in the "Mountains." Yet the normal Democratic majority of the state is but a few thousand; in the 1915 gubernatorial election was in fact only 471.

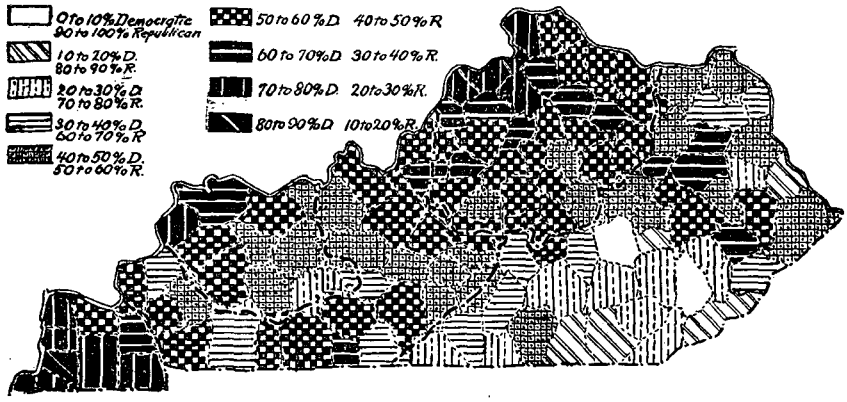

FIG. 6. DISTRIBUTION OF DEMOCRATIC AND REPUBLICAN VOTING STRENGTH IN KENTUCKY

Based on vote for governor in 1915

With a close relation between geographic divisions and party affiliations it is evident that the gerrymander has been employed to good purpose. The Blue-Grass serves the same purpose that the Boonslick region in Missouri does, as shown by its control of the 4th, 7th, 8th, and 9th districts (fig. 7). A less obvious, but skillful distribution of territory in the 2d and 3d districts has made both Democratic. The 1st district, by its position at the western extremity of the narrow state, has not lent itself to such uses, and shows a surplus of 10,000 Democratic votes. This district and the 11th are the only ones that are not in any sense gerrymandered. The 11th is, however, much oversized in population.

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The geographical divisions of Kentucky are of such size that they can be well accommodated to the population requirements of congressional districts. The population of the Blue-Grass region, estimated at its maximum area, is about that of three normal congressional districts. The "Mountains" contain nearly the same population. The city of Louisville will account for one district, as will the coal-bearing limestone district of the Owensboro-Henderson region. The remainder of the limestone upland has more than enough for two districts. The surplus, therefore, may be put with the Purchase lowlands to complete the last district of the state on a geographic rearrangement.

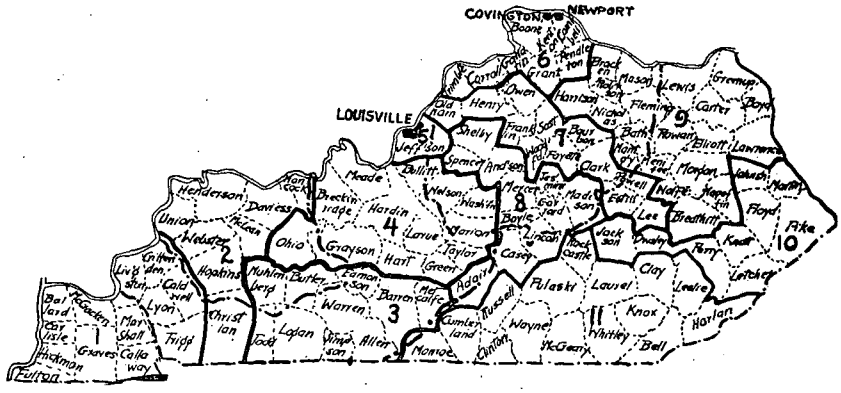

FIG. 7. CONGRESSIONAL DISTRICTS IN KENTUCKY

Even in the upland counties of this westernmost district lowland influences predominate, for they contain the mouths of the Cumberland and Tennessee rivers. The possibilities of making political divisions on geographic lines are, therefore, of an unusual nature in this state. Figure 8 shows the close accordance that may be achieved. These districts all have nearly identical populations. Moreover, except the two districts in the heart of the "Mountains," they all are organized about urban centers, with which they are well connected, and which would serve as informal capitals for the political life of their districts.

This geographical redistribution of districts would leave a Democratic majority of one, instead of the present control of nine out of eleven seats in Congress. It would, therefore, as in

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the case of Missouri, bring to light the fact, now thoroughly concealed, that the division of parties in Kentucky is sectional. On this basis, the Blue-Grass region and Louisville would form a compact group of four Democratic districts, encircled by upland Republican districts. On the west, the lowland and coal measures counties would add two more to the Democratic column.

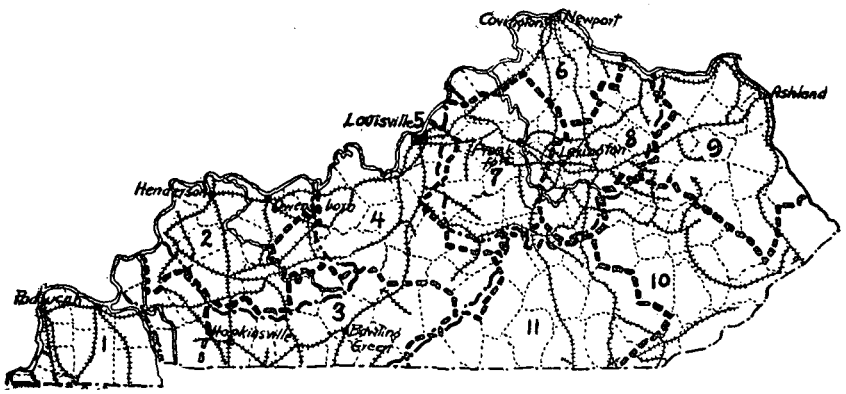

FIG. 8. GEOGRAPHIC REARRANGEMENT OF CONGRESSIONAL DISTRICTS IN KENTUCKY

As to area, the extent of the five Republican districts would be greater than that of the six Democratic ones. The following table gives the normal plurality of these geographically revised districts:

1. Democratic.	Majority.....10,000	7. Democratic.	Majority..... 7,000
2. Democratic.	Majority..... 1,500	8. Democratic.	Majority..... 1,500
3. Republican.	Majority..... 2,000	9. Republican.	Majority..... 4,000
4. Republican.	Majority..... 750	10. Republican.	Majority.....10,000
5. Democratic.	Majority..... 3,000	11. Republican.	Majority.....12,000
6. Democratic.	Majority..... 8,000		

TENNESSEE

As in few other states, the conditions and affairs of the people of Tennessee are based on geologic structure. Surface, drainage, soils, mineral resources, contact with other areas, all these have their determination in the geology. Geology is indeed a subject of every day importance in Tennessee, for upon it depend

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the wealth or poverty, progress or stagnation, even the political convictions of its sections to an extraordinary degree.

The state has eight natural divisions. Three of these are lowland areas, one in west, one in middle, and one in east Tennessee. Between them are highland areas, less densely settled, less prosperous, less significant in the affairs of the state.

West Tennessee forms a lowland area (I and II in fig. 9) in striking contrast to the uplands east of the Tennessee River. Geologically, Tennessee west of the Tennessee River is young, east of that stream old. The portion adjacent to the Mississippi River (I) is much superior in resources to the area adjoining the Tennessee (II). The former consists of the most recent sands, silts, and clays (largely Tertiary), overspread in part by loess, and of large amounts of alluvial lands. It is the most southern part of the state in its characteristics. Here most of the cotton of the state is produced, large land holdings are the rule, and the proportion of negroes is highest. The northern and southern sections of this area (I) again may be contrasted. In the north, corn and wheat replace largely the cotton culture of the southern counties, the negro population is much less numerous, and the white population is much less distinctly southern in character. The area west of the Tennessee River (II) is composed of older (in the main Cretaceous) sediments, with more gravelly and sandy material. The land is generally poor in humus, and in places has been sadly damaged by soil erosion. It is inhabited largely by rather poor, small farmers. The scant agricultural attractions of the area have not resulted in the introduction of negro labor to any extent. The Tennessee River is still the principal route of communication for a large part of this region. Railroads have been built across the area rather than into it.

The lowland area of central Tennessee is the Nashville Basin (V). It is a lowland region only with reference to the higher lands that completely surround it, called the Highland Rim. Geologically and geographically, it is the counterpart of the Blue-Grass region of Kentucky. It is splendid limestone farming country, producing corn, stock, and tobacco. East Ten-

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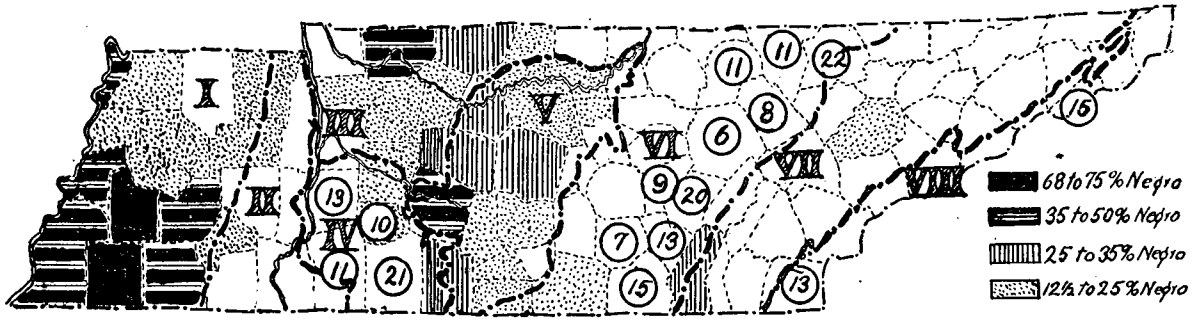

FIG. 9. GEOGRAPHIC DIVISIONS OF TENNESSEE

I and II, Lowlands of west Tennessee, I (of Tertiary and later age) being smoother, more productive, and more highly developed than II (of Cretaceous age); III and IV, western part of the Highland Rim, IV being rough hill country, III (the Clarksville region) less rough and especially productive of tobacco; V, the Nashville Basin, or lowlands of middle Tennessee; VI, eastern part of Highland Rim and Cumberland Plateau; VII, Valley of East Tennessee; VIII, Older Appalachian Mountains. The counties containing the lowest percentages of improved land are indicated by circles.

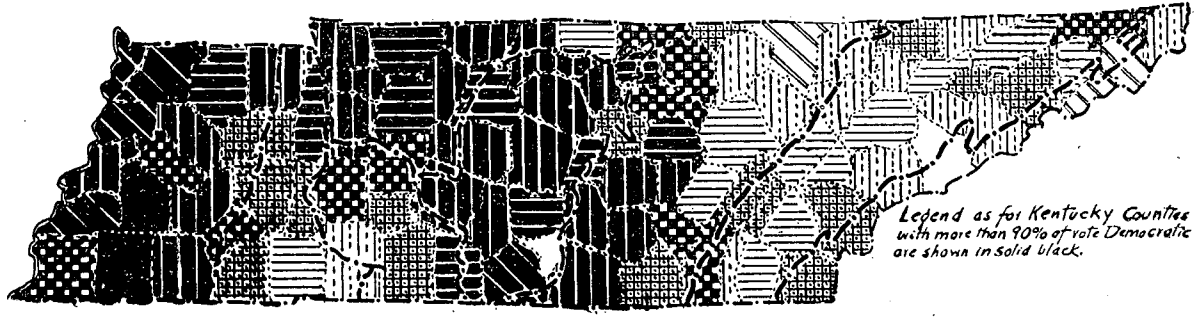

FIG. 10. DISTRIBUTION OF DEMOCRATIC AND REPUBLICAN VOTING STRENGTH IN TENNESSEE

Based on vote for governor in 1916

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nessee (VII) is a continuation of the Valley of Virginia, part of the great trough that lies within the Appalachian mountain system. Along the Carolina border rise the great mountain masses of the harder, older Appalachian rock formations (VIII). At the west the Valley of East Tennessee is overtopped by the long ridge of Walden or Cumberland Mountain, in reality the margin of a plateau, the Cumberland Plateau (VI), that slopes away toward the Nashville Basin. This is the Tennessee equivalent of the "Mountains" of Kentucky, and is no less isolated and unproductive than the region to the north. On the west of the Nashville Basin is a similar, but lower highland, especially poor and rugged in its southern part (IV). The northern part lies better, is less dissected, and has a much more desirable soil (III). It constitutes a prosperous tobacco growing section, similar to the adjacent region in Kentucky. In economic value this area ranks immediately after the three lowland regions.

Tennessee politics are the combined result of productivity of the soil and of geographical position. The poor areas here as in the other states discussed in this paper are Republican. The rich areas are Democratic, except the Valley of East Tennessee. This is as desirable a farming area as is found in the state and is the oldest part of the state in point of development. Yet this area, older than any in the three states under discussion, is strongly Republican. It was occupied originally by small farmers, not slaveholders, who passed southward through this great structural valley, largely from the Scotch-Irish and German settlements of Pennsylvania and Virginia. Small grains, hay, and corn remained the principal crops, and the institution of slavery never became profitable or popular with these people. Thus does the story of political faith in the border states go back even today to the causes of an institution that has disappeared two generations since. East Tennessee against the rest of the state has been the line-up in political frays almost since the state has been in existence.

The solid Republican eastern Tennessee is so situated that its gerrymandering is almost impossible, chiefly because of the attenuated form of the state. Here there are consequently two

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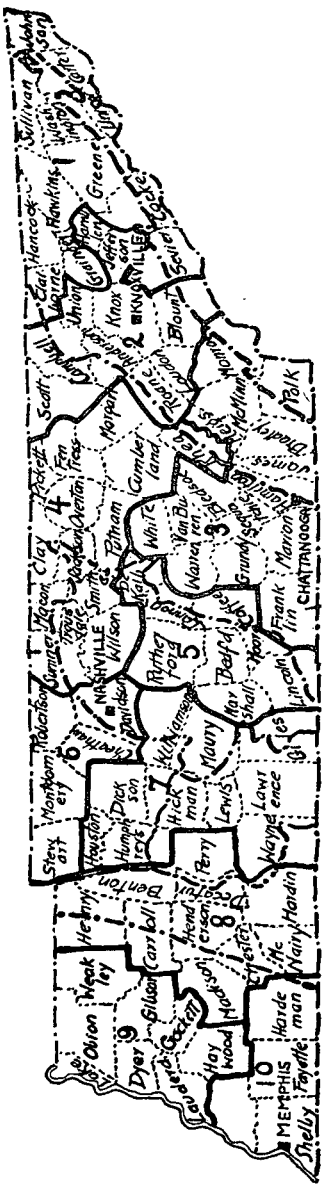

FIG. 11. CONGRESSIONAL DISTRICTS IN TENNESSEE

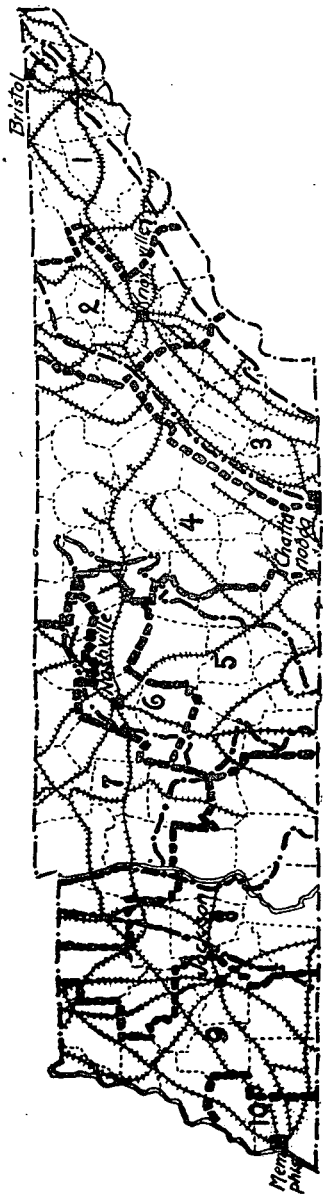

FIG. 12. GEOGRAPHIC REARRANGEMENT OF CONGRESSIONAL DISTRICTS IN TENNESSEE

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regularly Republican congressional districts (fig. 11). The other eight districts, however, are Democratic. Again we find the most centrally located Democratic area used for the control of adjacent districts, in this case the Nashville Basin controlling the 4th, 5th, 6th, and 7th districts. The 4th district includes parts of four distinct geographic regions, ranging from Rhea County, in the East Tennessee Valley, to Sumner, on the tobacco growing uplands of the western Highland Rim. The minor Republican district of the Tennessee River hills is easily concealed in the 7th and 8th districts by the plausible device of employing the river as a boundary line. The result is quite as unfair to the sections involved as is the similar practice in Missouri.

East and middle Tennessee are easily rearranged on a geographic basis. The Valley of East Tennessee has a population equivalent to three congressional districts (fig. 12). The Nashville Basin accommodates two. The intervening Cumberland Plateau and Highland Rim, although of large area, is the equivalent of one district. The tobacco growing Highland Rim, northwest of Nashville, becomes a district by the addition of two counties west of the Tennessee. The good lowlands of west Tennessee form two districts. The remaining district would be constituted by the broken country of the southwestern Highland Rim and the inferior lowland area west of the Tennessee River. For equality of population two of the better counties of west Tennessee, Gibson and Weakley, are added. These last constitute the only serious departure from geographic unity. By this arrangement every geographic division of the state receives political expression. The result would be five certain Democratic districts, two in west Tennessee, two in the Nashville Basin, and the Clarksville portion of the Highland Rim. The three districts of east Tennessee would be Republican. The Cumberland Plateau district and the district (8) formed by the southwestern Highland Rim and the Cretaceous lowlands would be doubtful. The result would again express the relative strength of the two parties in the state.

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DECISIONS OF THE SUPREME COURT OF THE UNITED STATES ON CONSTITUTIONAL QUESTIONS.[1] II

1914–1917

THOMAS REED POWELL

Columbia University

II. POLICE POWER

The decisions of the Supreme Court during the October terms of 1914, 1915, and 1916, indicate on the whole a more tolerant attitude towards the judgment of state legislatures on questions of the police power than one would be apt to infer from the criticisms called forth by the few cases in which laws were declared invalid. The cases on these questions gave rise to more diversity of opinion among the judges than did those arising under the commerce clause. In most of the important cases there was dissent, and several were decided by a vote of five to four. Chief Justice White, and Justices Van Devanter and McReynolds were opposed to the Oregon ten-hour law, the Washington compensation law and the Washington employment agency law; while Justices Holmes, Brandeis and Clarke were in favor of all three. On certain crucial questions these six justices seem quite likely to counteract each other, and leave the balance of power with Justices McKenna, Day and Pitney. Justices Pitney and Day were in favor of the ten-hour law and the compensation law and opposed to the employment agency law. Mr. Justice McKenna was in favor of the ten-hour law and the employment agency law and opposed to the compensation law. In the Oregon Minimum Wage Case, the court was divided four to four, Mr. Justice Brandeis not sitting. It is a natural inference from Mr. Justice Pitney's dissenting opinion in the

[1] For the first installment of this article see the *American Political Science Review* for February, 1918, pp. 17–49.

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case sustaining the Adamson Law that he voted with the Chief Justice and Justices Van Devanter and McReynolds against the minimum wage law.

The Washington employment agency law came before the court in Adams v. Tanner.[2] The statute made it a criminal offense to collect fees from workers for furnishing them with employment or with information leading to such employment, thus going beyond the provision of the Michigan law, sustained in Brazee v. Michigan,[3] which penalized an employment agency sending one seeking employment to an employer who had not applied for help. In the Washington case the majority of the court accepted as true the statement made on behalf of the agencies that their business could not continue if they were forbidden to collect fees from workers, even though they were still permitted to charge a commission to employers. It regarded the business of getting jobs for workers as distinguishable from that of getting workers for jobs, and held that the statute was one of prohibition rather than one of mere regulation. The minority did not seriously contest these positions, so that the main issue between the judges was whether the business was useful. Mr. Justice McReynolds, for the majority, asserted that it was. Mr. Justice Brandeis, for the minority, adduced evidence to sustain the position that the abuses in the business were serious and could not be satisfactorily met by legislation less drastic than that which Washington adopted. Whether the majority did not regard the evidence as trustworthy, or whether it thought that the business, in spite of the unavoidable abuses, was still useful and protected by the Constitution is not made wholly clear.

Coppage v. Kansas[4] held that a state cannot forbid an employer to require of an employee or one seeking employment

[2] (1917) 244 U. S. 590. See 5 *California Law Review* 494, 85 *Central Law Journal* 111, 17 *Columbia Law Review* 635, 31 *Harvard Law Review* 490, 12 *Illinois Law Review* 428, 2 *Minnesota Law Review* 56, 5 *Virginia Law Review* 361, and 27 *Yale Law Journal* 134.

[3] (1916) 241 U. S. 340.

[4] (1915) 236 U. S. 1. See 49 *American Law Review* 596, 15 *Columbia Law Review* 272, 28 *Harvard Law Review* 496, 19 *Law Notes* 13, 13 *Michigan Law Review* 497, 63 *University of Pennsylvania Law Review* 566, 20 *Virginia Law Register* 954, 2 *Virginia Law Review* 540, and 24 *Yale Law Journal*.

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an agreement not to become or remain a member of a labor union. Mr. Justice Pitney saw in the statute no other object than that of removing inequalities of fortune or of interfering with the powers and disabilities which flow from inequality of fortune, and this he found no proper object of the police power. Mr. Justice Holmes, in a brief dissent, said that "in present conditions a workman not unnaturally may believe that only by belonging to a union can he secure a contract that shall be fair to him." And he added: "If that belief, whether right or wrong, may be held by a reasonable man, it seems to me that it may be enforced by law in order to establish the equality of position between the parties in which liberty of contract begins." Mr. Justice Day also dissented, although he had been with the majority in Adair v. United States[5] which declared invalid a statute of Congress forbidding an interstate carrier to discharge an employee because of his membership in a union. He felt that the effects of the imposition forbidden by Kansas were much more serious and far-reaching than those likely to flow from the action prohibited by Congress, and that there was an important distinction between the exercise of the right to discharge at will and the imposition of a requirement that an employee, as a condition of employment, shall make a particular agreement to forego a legal right. He cited decisions sustaining other statutes which were rendered necessary by the fact that the inequality of the bargaining power of employees rendered them incapable of protecting themselves from impositions hostile to the public interest. Mr. Justice Hughes, who was not on the bench when the Adair case was decided, concurred in the dissent of Mr. Justice Day.

Three cases sustained state laws limiting hours of labor. Miller v. Wilson[6] and Bosley v. McLaughlin[7] involved eight-hour laws for women in various employments. In Bunting v.

[5] (1908) 208 U. S. 161.

[6] (1915) 236 U. S. 373.

[7] (1915) 236 U. S. 385. See 50 *American Law Review* 97, 3 *California Law Review* 323, and 13 *Michigan Law Review* 506. On the general subject, see Felix Frankfurter: "Hours of Labor and Realism in Constitutional Law," 29 *Harvard Law Review* 353.

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Oregon,[8] the much-reviled Lochner v. New York[9] which in 1905 had declared unconstitutional a ten-hour law for bakers was quietly laid to rest, without even being mentioned at its own obsequies. Chief Justice White, and Justices Van Devanter and McReynolds dissented, but without assigning their reasons. Mr. Justice Brandeis did not sit, having been of counsel. The Oregon statute was much broader than the bakery statute involved in the Lochner case, for it applied to men "in any mill, factory, or manufacturing establishment." Most of the opinion was concerned with questions raised by certain exceptions in the statute, and by the provision for extra rates of compensation for laborers permitted to work overtime in emergencies. It was contended that this made the statute really a wage law, but Mr. Justice McKenna answered that the purpose of the wage provisions was merely to deter employers from taking undue advantage of the permission to work employees overtime in certain contingencies. The reversal of the Lochner case is solemnized in the following language: "There is a contention made that the law, even regarded as regulating the hours of service, is not either necessary or useful for preservation of the health of employees. . . . The record contains no facts to support the contention, and against it is the judgment of the legislature and the supreme court [of Oregon]. . . ."

Two cases involved questions relating to wages. Rail & River Coal Co. v. Yaple[10] sustained the Ohio "run-of mine" or "anti-screen" law, thus affirming by unanimous decision the doctrine of McLean v. Arkansas,[11] from which Justices Brewer and Peckham had dissented. In Stettler v. O'Hara[12] the Oregon

[8] (1917) 243 U. S. 426. See 17 *Columbia Law Review* 538, 15 *Michigan Law Review* 584, 3 *Virginia Law Register*, n.s. 221, 5 *Virginia Law Review* 55, and 26 *Yale Law Journal* 607.

[9] (1905) 198 U. S. 45.

[10] (1915) 236 U. S. 338.

[11] (1909) 211 U. S. 539.

[12] (1917) 243 U. S. 629. See R. G. Brown, "The Oregon Minimum-Wage Cases," 1 *Minnesota Law Review* 471; T. R. Powell, "The Constitutional Issue in Minimum-Wage Legislation," 2 *Minnesota Law Review* 1, and "The Oregon Minimum-Wage Cases," 32 *Political Science Quarterly* 296. For a discussion of the decision in the state court, see 28 *Harvard Law Review* 89.

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minimum-wage law was saved from being declared unconstitutional because the judgment of the court below had been in its favor, and the Supreme Court was evenly divided on the question. Mr. Justice Brandeis did not sit, having been of counsel. Had the case come from a court which had declared the statute unconstitutional, that judgment would have been affirmed, since under the rules an equally divided vote affirms the judgment below. The decree in such a case is of course not a precedent on the constitutional issue. Since this decision, two additional state courts have sustained minimum-wage laws,[13] and the question may soon be presented to the Supreme Court again in a case in which Mr. Justice Brandeis may sit.

Statutory changes in the law of torts were approved in an important series of cases. In Easterling v. Pierce,[14] the court reaffirmed previous holdings to the effect that a state may give retroactive application to a statute making proof of the happening of an accident give rise to a prima facie presumption of negligence, and may abrogate the fellow-servant rule as to employees of railroads and similar enterprises, although retaining the rule in general. In Jeffrey Mfg. Co. v. Blagg[15] the court dismissed a complaint based on alleged discriminatory features of the Ohio workmen's compensation statute. It held it proper to take the defenses of contributory negligence, assumption of risk, and the fellow-servant rule from employers who did not elect to accept the optional compensation act, although employers of less than five employees were not made subject to the act and therefore retained their ancestral common-law defenses. Northern P. R. Co. v. Meese[16] sustained a provision of the Washington compensation law which confined employees to their

[13] See 31 *Harvard Law Review* 1013. For articles dealing with the general subject of the constitutionality of what is commonly called "social legislation," see E. S. Corwin, "Social Insurance and Constitutional Limitations," 26 *Yale Law Journal* 431; A. M. Kales, "Due Process, the Inarticulate Major Premise, and the Adamson Act," 26 *Yale Law Journal* 519; E. R. Keedy, "The Decline of Traditionalism and Individualism," 65 *University of Pennsylvania Law Review* 764; F. R. Mechem, "The Changing Legal Order," 15 *Michigan Law Review* 185.

[14] (1914) 235 U. S. 380.

[15] (1915) 235 U. S. 571. See 50 *National Corporation Reporter* 506.

[16] (1916) 239 U. S. 614.

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remedy against their employers under the act, and deprived them of their common-law action against third persons to whose negligence their misfortune was due.[17]

These three cases were forerunners to decisions affirming the power of the state to pass compensation acts which imposed liability on employers for injuries to their employees, even though no negligence on the part of the employer could be shown, and which fixed statutory rates of compensation to be awarded by an administrative commission. The objection to such legislation which the New York court of appeals had found fatal in Ives v. South Buffalo Ry. Co.[18] was that it imposed liability without fault. But Mr. Justice Pitney replied that "no one has a vested interest in any rule of law, entitling him to insist that it shall remain unchanged for his benefit." And he added that "liability without fault is not a novelty in the law." The opinion made it clear that the court was passing on the particular statute before it, and was not deciding "whether the state could abolish all rights of action, on the one hand, or all defenses, on the other, without setting up something adequate in their stead."

In New York Central R. Co. v. White,[19] which sustained the New York statute, the opinion compared the gains and losses to employers and employees from the change from the common-law to the statutory compensation plan, and found the alterations fundamentally fair to both. Various subordinate criticisms of compensation legislation were considered and refuted in Hawkins v. Bleakly,[20] which sustained the Iowa statute. The Washington law, sustained in Mountain Timber Co. v. Washington,[21] differed from the others before the court, in that

[17] For the results where statutes do not take away the common-law remedy against third persons, see 18 *Columbia Law Review* 598.

[18] (1911) 201 N. Y. 271.

[19] (1917) 243 U. S. 188. See T. R. Powell, "The Workmen's Compensation Cases," 32 *Political Science Quarterly* 542. See also 84 *Central Law Journal* 227, 15 *Michigan Law Review* 513, 1 *Minnesota Law Review* 449, 2 *St. Louis Law Review* 181, and 65 *University of Pennsylvania Law Review* 682.

[20] (1917) 243 U. S. 210.

[21] (1917) 243 U. S. 219. See 51 *American Law Review* 439, 54 *National Corporation Reporter* 410, and 26 *Yale Law Journal* 618.

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insurance in a state fund was compulsory, and employers had to pay to the fund even though they had no accidents in their particular establishments. The industries of the state, however, were classified, so that the less dangerous ones would make proportionately smaller contributions. Mr. Justice Pitney found this form of compulsory insurance substantially similar to that required of banks in the Oklahoma depositors' guarantee law sustained in Noble State Bank v. Haskell.[22] It required no more than what most business men seek voluntarily, i.e., a pooling of their risks by insurance so that they may be safe from the dangers of extraordinary catastrophies. Four justices dissented in this case, including Mr. Justice McKenna. The other compensation decisions were unanimous.

In Bowerstock v. Smith,[23] decided on the same day as the compensation cases, an employer sought to escape from liability imposed by statute for injuries due to defective appliances, by showing that the injured employee was by his contract charged with the duty to keep the machinery safe, and was therefore injured solely by his own neglect. But the Chief Justice answered that it was proper for the state to make the duty on the employer an absolute one which he could not shift by contract. He saw no merit in the complaint that this resulted in discrimination against corporations in favor of individuals, because corporations must in all cases perform that duty through agents on whom they must rely, while individual employers can give such matters their personal attention. It seems reasonable that such a voluntarily acquired characteristic as corporate impersonality must be accepted with the disabilities inherent in the very privilege sought.

When we turn from decisions involving what is commonly termed labor legislation to those dealing with other exercises of the police power, we find considerably less disagreement among the judges. In spite of the vigor with which voluminous objections were urged against "Blue Sky" legislation, Mr. Justice McReynolds was the only one who deemed it unconstitutional.

[22] (1911) 219 U. S. 104.
[23] (1917) 243 U. S. 29.

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The Ohio law was sustained in Hall v. Geiger-Jones Co.[24] The complainant had made no attempt to secure from the superintendent of banks a license to deal in securities, as the law required, yet he raised the objection that the statute gave arbitrary power to the state official, since there was no standard of what was "business integrity" and what was of good repute. But the court answered that it was "a little surprised that it should be implied that there is anything recondite in a business reputation or its existence as a fact which should require much investigation." And it was said to be "apparent that if the conditions are within the power of the state to impose, they can only be ascertained by an executive officer." Under the statute there might be judicial review of the officer's judgment, so that the court had little difficulty in relying on the assumption that the superintendent would not wantonly or arbitrarily deny a license to a reputable dealer. The opinion deals summarily with two pages of allegations of baneful discriminations in the provisions of the statute, dismissing them with the answer that the state "may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses."

The Ohio statute required the superintendent to pass judgment on the character and reputation of the person offering securities for sale. The statute of South Dakota, sustained in Caldwell v. Sioux Falls Stock Yards Co.,[25] and that of Michigan, sustained in Merrick v. N. W. Halsey & Co.,[26] subjected the securities to the judgment of an administrative official and directed him to ascertain whether their sale would work a fraud on the purchaser. Judicial review of the administrative determination was provided by the South Dakota statute, and the statement of facts in the Michigan case says that the law of Michigan is almost identical with that of South Dakota. Both

[24] (1917) 242 U. S. 539. See C. D. Laylin, "The Ohio 'Blue Sky' Laws," 15 *Michigan Law Review* 369; and R. S. Spielman, "The Constitutionality of Blue Sky Laws," 49 *American Law Review* 389. See also 84 *Central Law Journal* 99, 17 *Columbia Law Review* 244, and 65 *University of Pennsylvania Law Review* 785.

[25] (1917) 242 U. S. 559.

[26] (1917) 242 U. S. 568.

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statutes were regarded by the court as designed to protect only against fraud, and not to seek to prevent financial loss from other causes. It was declared that the fact that fraud might be practiced in a business was enough to subject it to the licensing power, and that it was not essential that fraud be necessarily incidental to the business. The contentions urged against the statute were so numerous that the court does not undertake to deal with them in detail; but the opinions of Mr. Justice McKenna deal with the substance of the objections in a masterly fashion, which makes them a valuable contribution to judicial literature on the police power.[27]

The question whether a state may put an end to the trading-stamp enterprise, upon which state courts have been divided, was settled by the Supreme Court in the affirmative in Rast v. Van Deman & Lewis Co.,[28] which sustained a statute of Florida, and Tanner v. Little[29] and Pitney v. Washington[30] which upheld the Washington law. Both statutes imposed license taxes on merchants and others issuing redeemable coupons with sales of goods. The amount was so high that the court conceded that it was prohibitive. "Of course," said Mr. Justice McKenna, "it is an exercise of the police power of the state." The cases thus throw no light on the mooted question whether a state may tax out of existence a business that it may not directly prohibit.

[27] Of the statute in question, the learned justice says: "It burdens honest business, it is true, but burdens it only that, under its forms, dishonest business may not be done. This manifestly cannot be accomplished by mere declaration; there must be conditions imposed and provision made for their performance. Expense may thereby be caused and inconvenience, but to arrest the power of the state by such considerations would make it impotent to discharge its function. It costs something to be governed." And of the objection that the law "shields contemplated purchasers from loss of property by the exercise of their own 'defective judgment' and puts them as well as the sellers under guardianship," he says: "If we may suppose that such purchasers would assert a liberty to form a 'defective judgment,' and resent means of information as a limitation of their freedom, we must wait until they themselves appear to do so."

[28] (1916) 240 U. S. 432. See C. S. Duncan, "The Economics and Legality of Premium Giving," 24 *Journal of Political Economy* 291. See also 29 *Harvard Law Review* 779, 24 *Journal of Political Economy* 498, 20 *Law Notes* 161, and 64 *University of Pennsylvania Law Review* 734.

[29] (1916) 240 U. S. 369.

[30] (1916) 240 U. S. 387.

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The Supreme Court declined to accept the judgment of one of the lower federal courts that the use of trading stamps is an entirely legitimate form of advertising. Of the argument in their favor Mr. Justice McKenna observed that "it regards the mere mechanism of the schemes alone, and does not give enough force to their influence upon conduct and habit, not enough to their insidious potentialities." Though not exactly a lottery, trading stamps were said to have the "seduction and evil" of lotteries and gaming, in that "by an appeal to cupidity" they "lure to improvidence." The recognition that trading stamps are social parasites has the germ of an important development in these days when men are beginning to see more clearly that what is profitable to a few is not necessarily so socially useful that it is protected from harm by the due-process clause.

The Oklahoma depositors' guarantee law came before the court again in Langford v. Platte Iron Works Co.[31] which held, in a suit by an alleged depositor whose claim had not been recognized by the state board, that the constitutionality of the law was not affected by the fact that the state had vested title to the fund in itself so that depositors could not sue in the courts on claims disallowed. Four justices dissented as to the interpretation of the law, holding that, since the title of the state was a bare legal title, suit against the state board was not suit against the state. The dissenting opinion pointed out that the legislation was intended to convey the impression that the "deposits were to be secured by the fund, and not by the state," and observed that "it savors of repudiation to read into the scheme an unexpressed condition that renders the promise unenforceable by any means within the command of the promissee;" but it did not declare that the interpretation of the majority made the law unconstitutional. Since the state court had held that the board was not subject to mandamus, the state has vested an uncontrolled power to prefer some depositors of an insolvent bank at the expense of others. When states are more and more going into business, it is well to con-

[31] (1915) 235 U. S. 461.

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sider whether their immunity from suit should extend beyond their distinctly political acts.[32]

Passing from finance to morals, we find three cases sustaining restrictions on the exhibition of moving pictures, against the objections that such censorship interferes with freedom of opinion and its expression, and delegates legislative power to administrative officials.[33] The display of such pictures was declared to be "a business, pure and simple, originated and conducted for profit, like other spectacles," and not to be regarded "as part of the press of the country, or as organs of public opinion." The power vested in the censors was held to be merely "a power to ascertain the facts and conditions" to which the policy and principles of the statute apply. The anemia of the principle of the separation of powers is indicated by statements in the opinions that "cases have recognized the difficulty of the exact separation of the powers of government," and that "the exact specification in statutes of the instances of their application would be as impossible as the attempt would be futile."

Somewhat difficult to classify is Waugh v. Board of Trustees,[34] which sustained a statute of Mississippi which, as enforced, excluded from the state university all members of Greek-letter fraternities who declined to refrain from participation in the activities of their chapters, even though this was a chapter in a private institution from which they had graduated. The complainant was willing to give a pledge not to affiliate in any way with any chapter in the university to whose law school he was seeking admission; but the court declined to go into the refinement of particular cases, and declared that it was for the

[32] The doctrine of the Langford Case was followed in Farish v. State Banking Board, (1915) 235 U. S. 498, in which it was held that the immunity of the state from suit was not waived by the unauthorized participation of the banking board in previous litigation between the same parties.

[33] Mutual Film Corporation v. Industrial Commission of Ohio, (1915) 236 U. S. 229; Same v. Same, (1915) 236 U. S. 247; and Mutual Film Corporation of Missouri v. Hodges, (1915) 236 U. S. 248. See 49 *American Law Review* 612, and 13 *Michigan Law Review* 515.

[34] (1915) 237 U. S. 589. See 50 *American Law Review* 126, 81 *Central Law Journal* 39, and 51 *National Corporation Reporter* 50.

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state to determine whether membership in a fraternity "makes against discipline." It suggested that the enactment "may have been induced by the opinion that membership in the prohibited societies divided the attention of students, and distracted from that singleness of purpose which the state desired to exist in its public educational institutions," and added that "it is not for us to entertain conjectures in opposition to the views of the state, and annul its regulations upon disputable considerations as to their wisdom and necessity." Thus Mississippi is made safe for the pursuit of democracy and the higher intellectual life.

A more direct way of inducing worthy toil came before the court in Butler v. Perry,[35] which sustained a statute of Florida requiring every able-bodied male person between the ages of twenty-one and forty-five to labor six days a year on the highways of the state, or furnish a substitute or pay three dollars. Against the objection that this was an imposition of involuntary servitude, it was pointed out that "from colonial days to the present time conscripted labor has been much relied on for the construction and maintenance of roads." The reasoning of the opinion consists almost entirely of the recital of historical precedents. Nevertheless the decision must be regarded as of important significance on the constitutionality of legislation forbidding strikes[36] and on the propriety of the increasing number of "anti-loafing" laws.

Three cases sustained the power of the state to license optometrists,[37] private detectives,[38] and "drugless practitioners."[39] In each case the charge of discrimination was made and dismissed. A drugless practitioner who used faith, hope, and

[35] (1916) 240 U. S. 328. See 2 *Virginia Law Register*, n.s. 60.

[36] See A. A. Ballantine, "Railway Strikes and the Constitution," 17 *Columbia Law Review* 502, and T. I. Parkinson, "Constitutional Aspects of Compulsory Arbitration," 7 *Proceedings of the Academy of Political Science of New York* 44.

[37] McNaughton v. Johnson, (1917) 242 U. S. 344. See 15 *Michigan Law Review* 516.

[38] Lehon v. Atlanta, (1916) 242 U. S. 53. See note in the Lawyers' Edition of the Supreme Court Reports, vol. 61, p. 146.

[39] Crane v. Johnson, (1917) 244 U. S. 339.

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mental suggestion was given no comfort because his rivals who used prayer were immune from regulation. The court said that it could not declare that the state's estimate of the difference between prayer and other practices was arbitrary and therefore beyond the power of government. A person who called herself an ophthalmologist complained that persons of her ilk were discriminated against in favor of optometrists, but since she failed to enlighten the court as to the difference between the two, she was denied relief. The detective caught practicing without a license was a nonresident. His allegation that the administration of the ordinance discriminated against nonresidents was not considered, because he had made no attempt to secure a license. The ordinance seemed to give the board of police commissioners uncontrolled discretion in granting and refusing licenses, and to set no standard of fitness to be applied to applicants; but it was sustained, without mention of these features, as a regulation of "one of the necessary activities of government." The idea of the court seemed to be that detectives exercised governmental functions, and that therefore the state had practically complete power in determining who should fill the rôle.

In enumerating the cases under the commerce clause,[40] mention has already been made of the decisions sustaining statutes forbidding the sale of food preservatives containing boric acid,[41] requiring lard sold at retail to be put up in one, three, or five pound packages net weight, or some multiple of these numbers,[42] and forbidding the shipment from the state of citrous fruits which are immature or otherwise unfit for consumption.[43] Only the first of these statutes can be regarded as passed for the purpose of protecting health. The North Dakota statute with respect to lard was a sequel to an earlier one requiring each package to bear a label stating the net weight. The Supreme Court accepted the judgment of the state court that the later

[40] 12 *American Political Science Review* 37–38.

[41] Price v. Illinois, (1915) 238 U. S. 466.

[42] Armour & Co. v. North Dakota, (1916) 240 U. S. 510.

[43] Sligh v. Kirkwood, (1915) 237 U. S. 52. See 80 *Central Law Journal* 361, and 28 *Harvard Law Review* 819.

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statute was necessary to make it entirely clear to a purchaser just how much lard he was getting, and to differentiate between what he was paying for lard and what for a tin pail. The statute was upheld as one designed to prevent deception. The Florida law forbidding the exportation of green oranges was sanctioned as one passed for the purpose of protecting the reputation and character of Florida fruits in the markets of other states.

In another case involving food regulations, the object of the statute was not the protection of health. Hutchinson Ice Cream Co. v. Iowa[44] sustained a statute of Pennsylvania prohibiting the sale of ice cream containing less than 8 per cent of butter fat, and a similar statute of Iowa making the minimum 12 per cent. The opinion states that no objection was made to the minimum fixed by these statutes, provided the regulations were otherwise constitutional. It notes that 12 other states have similar statutes fixing the minimum at 14 per cent; 5 other states, 12 per cent; while the United States department of agriculture fixes 14 per cent as the standard, and only 8 states have a minimum as low as Pennsylvania. The complainants contended that "ice cream" had come to be a generic name for a variety of wholesome products which in fact were not made from dairy cream. But the court held that the statutes merely enabled the purchaser to know exactly what he was getting when he called for ice cream, and observed that the legislature might conclude that fraud or mistake can be effectively prevented only by prohibiting the sale of the article under the usual trade name, if it fails to meet the requirements of the standard set. It was assumed that these wholesome products which had masqueraded under the name of ice cream might still be sold. But the complaining so-called Ice Cream Company evidently thought that its product by any other name would not be so acceptable to purchasers, and that it was entitled to be protected in the enjoyment of the name it had filched.

A number of cases related to restrictions upon the use of property or to impositions of positive duties upon the owners

[44] (1916) 242 U. S. 153. See 26 *Yale Law Journal* 416.

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of property. Reinman v. Little Rock[45] sanctioned an ordinance forbidding the continuance of a livery stable in a densely populated and busy part of a city. The court assumed that the decree of the state court was based on the confession by demurrer of the facts alleged by the city that the stables in question were conducted in a careless manner, with offensive odors, and so as to be productive of disease. It was implied that a different question would be raised if the facts were, as alleged by the owner, that the stables were properly conducted and had been so conducted for a long time in the same location, and at large expense for permanent structures, and that the removal to another location would be very costly. Thus the decision does not stand for the proposition that a good stable may be outlawed, even in a populous part of the city.

Yet the fate meted out to a brickyard in Hadacheck v. Sebastian[46] may well cause even the best livery stable to tremble. This case sustained an ordinance of Los Angeles prohibiting brickmaking within a designated area. The complainant alleged that his property was worth $800,000 for brickmaking purposes, and not over $60,000 for any other purpose. This does not seem to have been specifically denied, although the state court in sustaining the ordinance had considered the case from the standpoint of the offensive effect of the operation of the brickyard, and not from that of the deprivation of the use of the deposits of clay, thereby distinguishing Ex parte Kelso,[47] in which the California court declared invalid an ordinance absolutely prohibiting the operation of a stone quarry within a certain portion of the city. The Supreme Court decided the case on the assumption that the owner might still dig his clay and cart it elsewhere, and that his property, though greatly reduced in value, was not entirely taken away. "It is to be remembered," said Mr. Justice McKenna, "that we are dealing with one of the most essential powers of the government,—one that is the least

[45] (1915) 237 U. S. 171. See 19 *Law Notes* 51.

[46] (1915) 239 U. S. 384. See 1 *Southwestern Law Review* 47, and 44 *Washington Law Reporter* 714.

[47] 147 Cal. 609.

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limitable. It may, indeed, seem harsh in its exercise, usually is on some individual, but the imperative necessity for its existence precludes any limitation upon it when not exercised arbitrarily. A vested interest cannot be asserted against it because of conditions once obtaining. To so hold would preclude development and fix a city forever in its primitive conditions. There must be progress, and if in its march private interests are in the way, they must yield to the good of the community."

A Chicago billboard ordinance was sustained in Thomas Cusack Co. v. Chicago.[48] This prohibited the erection of any billboard over 12 square feet in area in any block in which one-half of the buildings on both sides of the street are used exclusively for residence purposes, without first securing the consent of a majority of the owners on both sides of the block. The court avoided the issue whether the police power may be used for aesthetic purposes, by accepting at face value the findings of the state supreme court that "fires had been started in the accumulation of combustible material which gathered about such billboards, that offensive and unsanitary accumulations are habitually found about them, and that they afford a convenient concealment and shield for immoral practices and for loiterers and criminals." The state supreme court had held that the trial court had erroneously excluded evidence offered by the city to show that residence areas did not have as full police and fire protection as business areas, that the streets of residence sections are more frequented by unprotected women and children than, and are not so well lighted as, other sections of the city, and that most of the crimes against women and children are offenses again their persons. The purpose of such evidence was of course to rebut the contention of the billboard owners that the limited area to which the ordinance applied proved that it could not have been passed for the protection of health, morals and safety.

[48] (1917) 242 U. S. 526. See 84 *Central Law Journal* 155, 3 *Cornell Law Quarterly* 135, 15 *Michigan Law Review* 502, 1 *Minnesota Law Review* 441, 2 *Southern Law Quarterly* 233, 65 *University of Pennsylvania Law Review* 686, 2 *Virginia Law Register*, n.s. 940, and 26 *Yale Law Journal* 420.

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The Supreme Court of the United States declared that even without the testimony improperly excluded, there was enough to show the propriety of putting billboards in a class by themselves, and to "justify the prohibition against their erection in residence districts of the city in the interest of the safety, morality, health and decency of the community." The court referred to its disposition to "favor the validity of laws relating to matters completely within the territory of the state enacting them," and to its reluctance to disagree "with the local legislative authority, primarily the judge of the public welfare, especially when its action is approved by the highest court of the state whose people are directly concerned." Mr. Justice McKenna dissented, without opinion. The case seems to be an entering wedge to a modification and possibly an abandonment of the notion that aesthetic considerations do not furnish a sufficient warrant for restrictions on the use of private property.[49] Fanciful considerations lugged in by the heels as an aid in distinguishing prior cases are not infrequently the prelude to overruling them.

Ordinances prohibiting the emission of dense smoke furnish another instance where economic and aesthetic considerations reinforce the professed object of promoting health. Such an ordinance was sustained in Northwestern Laundry v. Des Moines.[50] The opinion declared that "the harshness of such legislation, or its effects on business interests, short of merely arbitrary enactment, are not valid constitutional objections." An additional service to cleanliness was rendered by Booth v. Indiana,[51] which sustained a statute requiring operators of certain industries to provide suitable washhouses or washrooms upon the request in writing of twenty or more of their em-

[49] See Eubank v. Richmond, (1912) 226 U. S. 137. On the general subject of aesthetics and the police power, see H. L. McBain, *American City Progress and the Law*, chapter 2. See also E. L. Millard, "Present Legal Aspect of the Billboard Problem," 11 *Illinois Law Review* 29, and a note on "Aesthetics and the Fourteenth Amendment," in 29 *Harvard Law Review* 860.

[50] (1916) 239 U. S. 486. See 4 *California Law Review* 416, and 16 *Columbia Law Review* 239.

[51] (1915) 237 U. S. 391.

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ployees, or if less than twenty are employed, upon the request of one-third of those employed.

The direct relation to health and safety of the statute sustained in Miller v. Strahl[52] is readily apparent. The case established that a statute imposing on innkeepers having hotels of more than fifty rooms the duty to do all in their power to give notice to guests in case of fire is within the police power, at least where applied to a case in which through failure to make any adequate investigation a guest was permitted to sleep for two hours after indications that fire existed. It was urged that the statute was unconstitutional because too indefinite, but the court said that rules of conduct must necessarily be expressed in general terms, and that what would constitute "all within one's power" must vary with circumstances.[53]

That part of the police power which imposes restrictions and duties on public carriers depends upon special considerations which do not apply to police power in general. Prescriptions of rates and facilities of service are imposed quite independently of any solicitude for health, safety or morals. The general public welfare has here found a recognition which is not yet accepted as a justification for requirements on those engaged in purely private undertakings. Nevertheless the due-process clause is a shield to public-service enterprises against unreasonable or arbitrary requirements, and in a number of cases decided during the period under consideration, judicial relief has been granted against legislative and administrative commands.

[52] (1915) 239 U. S. 426.

[53] It was also contended that the statute was invalid because it did not apply to hotels having less than fifty rooms, and therefore discriminated against larger hotels, but the contention was not sustained. For a case in which a provision of the Louisiana anti-trust law was declared invalid because so framed as to apply exclusively to the American Sugar Refining Co., see McFarland v. American Sugar Refining Co., (1916) 241 U. S. 79. The statute also created certain presumptions from paying more for sugar in other states than in Louisiana, and from closing or keeping idle a factory more than a year. The opinion of the court indicates that these presumptions would have been held vicious, even if the statute had not been invalid because of its discriminatory features. See 1 *Southern Law Quarterly* 279.

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The most interesting of these cases is Chicago, M. & St. P. R. Co. v. Wisconsin,[54] which declared it unconstitutional to forbid a sleeping-car company to let down an unoccupied and unengaged upper berth, when the lower berth in the same section is occupied. The statute was characterized as one which sought to compel an owner to permit others to enjoy his property without pay. It was held vicious as an unwarranted interference with the management of complainant's business, as well as a taking of its property. And the right to amend corporate charters was declared not to authorize the taking of property without compensation. Justices McKenna and Holmes dissented, without opinion. Justices Brandeis and Clarke had not at this time succeeded Justices Lamar and Hughes. The contention that the act was a health measure, in that compliance with it would tend to improve the ventilation of the car for the benefit of all its occupants, was rejected on the grounds that the act did not purport to be a health measure, and that if it were designed for this object, it should not have permitted any occupancy of upper berths. Weight was given to the argument of the company that sleep and privacy would be interfered with by letting down upper berths after the occupant of the lower berth had entered into his rest. Such would of course be the result of the operation of the statute when upper berths were purchased subsequent to the occupancy of the one below.

Two cases which depend on their special facts reversed orders to carriers to restore to service certain passenger trains[55] and to make switching arrangements with other carriers.[56] In Great Northern R. Co. v. Minnesota,[57] the court reversed an order of a state commission requiring a carrier to install scales at its stockyards in a given village, without first giving it an opportunity to abate any existing discrimination against the village

[54] (1915) 238 U. S. 491. See 51 *National Corporation Reporter* 241, and 64 *University of Pennsylvania Law Review* 77.

[55] Mississippi R. Com. v. Mobile & O. R. Co., (1917) 244 U. S. 388. See 27 *Yale Law Journal* 121.

[56] Louisville & N. R. Co. v. United States, (1916) 242 U. S. 60. See 17 *Columbia Law Review* 347, and 2 *Southern Law Quarterly* 165.

[57] (1915) 238 U. S. 340.

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by discontinuing similar scales at other near-by stockyards. Such service was held one which a carrier was under no duty to provide, so long as it did not by furnishing such facilities elsewhere discriminate against one locality in favor of another.

In two cases, rates prescribed by the legislature were declared invalid because they did not produce the requisite "fair return" on the "fair value." Norfolk & W. R. Co. v. Conley[58] annulled a legislative prescription of a flat two-cents per mile rate for passenger traffic, where it appeared that the rate would yield but a narrow margin above the cost of traffic. Northern P. R. Co. v. North Dakota[59] relieved the complainant from rates prescribed for transportation of coal in carload lots, where the rates would yield little if any more than the out-of-pocket costs for the carriage of the particular commodity, even though the returns from the entire intrastate operations would still be adequate. Mr. Justice Pitney dissented in both cases, but without rendering opinions.

Much more numerous were the cases in which requirements on carriers were sustained. Missouri P. R. Co. v. Omaha[60] required a railroad to construct a viaduct across its tracks and to bear the whole expense thereof, even though a considerable part of the expense was occasioned by the necessity of making the structure sufficiently strong to support the tracks of a street railway company enjoying a franchise to use the streets. Rome Railway & Light Co. v. Floyd County[61] compelled a street railway to share the cost of removing old highway bridges and building new ones along the route over which its tracks ran. In one case a railroad was required to build a new bridge over a drainage ditch,[62] and in another the cost of a similar bridge was put on an irrigation company.[63] Chicago & A. R. Co. v. Tran-

[58] (1915) 236 U. S. 605. See 1 *Southern Law Quarterly* 56.

[59] (1915) 236 U. S. 585.

[60] (1914) 235 U. S. 121.

[61] (1917) 243 U. S. 257.

[62] Lake Shore & M. S. R. Co. v. Clough, (1917) 242 U. S. 375. See Louisville Bridge Co. v. United States, (1917) 242 U. S. 409, for a case sustaining an order of the secretary of war compelling the elevation of a bridge so as to lessen the interference with commerce on the river below.

[63] Farmers' Irrigation District v. Nebraska, (1917) 244 U. S. 325.

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barger[64] held that a railroad could be compelled to construct transverse openings in rights of way and roadbeds to take care of surface water. Chicago, T. H. & S. R. Co. v. Anderson[65] sustained an Indiana statute requiring railway companies to cut down and destroy noxious weeds on lands occupied by them. The further provision allowing any person aggrieved by a company's neglect to comply with the statute to recover a penalty of $25 was also sustained, where the provision had been given by the state court no broader scope than to permit a single recovery by a contiguous landowner.

Several cases sustained orders compelling track connections[66] and interchange of traffic.[67] Others sanctioned orders to street railroads to carry policemen free,[68] to carry passengers beyond the limit of the particular franchise held by the company,[69] and to double-track a portion of the line.[70] The Arkansas full-crew law was sustained in St. Louis, I. M. & S. R. Co. v. Arkansas.[71] It required switching operations in cities of the first and second class to be conducted with a crew of not less than one engineer, a fireman, a foreman, and three helpers. Chesapeake & O. R. Co. v. Public Service Commission[72] sustained an order compelling passenger service on a branch line hitherto used only for freight, although the service so ordered, separately considered, would be conducted at a loss.

Van Dyke v. Geary[73] held, Mr. Justice McReynolds alone dissenting, that it was proper to subject to rate regulation a

[64] (1915) 238 U. S. 67.

[65] (1916) 242 U. S. 283.

[66] Seaboard Air Line Ry. Co. v. Railroad Commission, (1916) 240 U. S. 324.

[67] Michigan C. R. Co. v. Michigan Railroad Commission, (1915) 236 U. S. 615; Louisville & N. R. Co. v. United States, (1915) 238 U. S. 1; Pennsylvania Co. v. United States, (1915) 236 U. S. 351. See 28 *Harvard Law Review* 799.

[68] Sutton v. New Jersey, (1917) 244 U. S. 258. See 3 *Virginia Law Register*, n.s. 376.

[69] Puget Sound Traction L. & P. Co. v. Reynolds, (1917) 244 U. S. 574. See 66 *University of Pennsylvania Law Review* 83.

[70] Phoenix R. Co. v. Geary, (1915) 239 U. S. 277.

[71] (1916) 240 U. S. 518.

[72] (1917) 242 U. S. 603. See 84 *Central Law Journal* 209, 3 *Iowa Law Bulletin* 245, and 62 *Ohio Law Bulletin* 241.

[73] (1917) 244 U. S. 39.

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water system owned by a private individual who delivers water to adjoining landowners in pipes at the boundary between his land and theirs. Terminal Taxicab Co. v. Kutz[74] allowed the District of Columbia to subject a taxicab company to rate regulation as a public utility for such part of its service as consists in regularly carrying passengers between the station and hotels, but not for that part which consists in furnishing automobiles to persons who apply for them from the garage. In Wadley S. R. Co. v. Georgia,[75] a railroad was compelled to discontinue the practice of demanding prepayment of freight from one connecting carrier when it did not exact such prepayment from another. A trunk line railroad was forbidden in O'Keefe v. United States[76] to give rebates or bonuses to tap lines owned by shippers. And in Missouri P. R. Co. v. McGrew Coal Co.[77] the court sustained a provision in the Missouri constitution which forbade railroads to charge more for a shorter than for a longer intrastate haul, and gave shippers an absolute right to recover any overcharge. The opinion intimated that special circumstances might make it improper to enforce the provision in particular cases, but declared that the fact that the state constitution did not make provision for such special circumstances did not make it necessarily invalid.

Three cases involved statutes imposing liabilities on carriers. Chicago & A. R. Co. v. McWhirt[78] held that it was proper for a state to apply to a domestic railroad company which had leased its road to a foreign corporation, a statute passed prior to the lease making the lessor jointly liable with the lessee for any actionable tort of the latter. The statute sustained in Atlantic C. L. R. Co. v. Glenn[79] provided that all carriers participating in an intrastate shipment are agents of each other, so that any one may be sued for an injury to goods occurring on any part of the route, the one so sued being given the right of recovery

[74] (1916) 241 U. S. 252. See 17 *Columbia Law Review* 710.
[75] (1915) 235 U. S. 651. See 63 *University of Pennsylvania Law Review* 430.
[76] (1916) 240 U. S. 294.
[77] (1917) 244 U. S. 191.
[78] (1917) 243 U. S. 422.
[79] (1915) 239 U. S. 388. See 82 *Central Law Journal* 80.

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over against the carrier in fault. The liability imposed on a railroad in Santa Fe P. R. Co. v. Lane[80] was suffered, not because the railroad was a carrier, but because it was a grantee of public lands which had made default. It was therefore compelled to pay for the cost of making surveys of the patented lands, and the statute was sustained against the plaint of the railroad that it violated its previously vested rights.

It is apparent that most of the cases brought by railroads to the Supreme Court involve no important questions of constitutional law. They raise merely issues of fact and questions of judgment as to what is fair and reasonable. Not infrequently these cases are the most involved and intricate with which the court has to deal. In comparatively few cases are the orders and statutes complained of annulled. It would materially lighten the burdens of the Supreme Court if some way could be found to protect its calendar from this kind of litigation.

III. TAXATION

Cases involving the power of a state to tax foreign corporations engaged partly in interstate commerce were considered in the previous installment of this catalogue.[81] Analogous questions are presented by state taxes alleged to interfere with some federal agency. Thus in Choctaw, O. & G. R. Co. v. Harrison[82] it was held that a state cannot impose a privilege tax on a corporate lessee of coal mines on unallotted lands belonging to Indian tribes under the wardship of the national government. On the other hand, Fidelity & Deposit Co. v. Pennsylvania[83] held that a surety company does not by furnishing bonds to contractors for the United States government become thereby a federal agency so as to be immune from state taxation on the premiums received. So also in Bothwell v. Bingham County[84] a state was allowed to tax land formerly belonging to the national government, when

[80] (1917) 244 U. S. 492.
[81] 12 *American Political Science Review* 29–32.
[82] (1914) 235 U. S. 292.
[83] (1916) 240 U. S. 319. See 82 *Central Law Journal* 279.
[84] (1915) 237 U. S. 642.

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the entire beneficial interest had passed to a private individual, even though he has not yet received his patent.

The question whether memberships in an unincorporated chamber of commerce, which had no capital and transacted no business for profit, were taxable as property came before the court in Rogers v. Hennepin,[85] and was answered in the affirmative. It was also held proper for the state to fix the situs of such membership at the place where the exchange was located and where its members did business, even though they were domiciled elsewhere. Another question involving the situs of intangibles arose in Bullen v. Wisconsin,[86] which allowed a state to impose an inheritance tax on a fund kept and managed in another state for the benefit of a decedent domiciled in the taxing state, who reserved to himself in his life time the absolute control over the fund.

Two cases involved taxation on foreign insurance companies. In Provident Sav. L. Assur. Soc. v. Kentucky,[87] a company which solicited no new business within the state, but merely continued existing policies on the lives of residents, collecting the renewal premiums at its home office, was held not to be doing business in the state, and was therefore declared immune from taxation. But if the company is writing some new business within the state, Equitable L. Assur. Soc. v. Pennsylvania[88] holds that a tax on premiums received from business done within the state may include the premiums paid in other states on policies on the lives of residents of the taxing state. Thus the state is allowed to include in its measure of assessment certain items which would not, if separately considered, afford jurisdiction to tax at all. It was pointed out that many incidents of the contracts were likely to be attended to in the taxing state, such as the payment of dividends and the adjustment of death claims. "It is not unnatural," said Mr. Justice Holmes, "to take the policy holders residing in the state as a measure, without going into nicer if not impracticable details. Taxation has to be

[85] (1916) 240 U. S. 184.
[86] (1916) 240 U. S. 625.
[87] (1915) 239 U. S. 103.
[88] (1915) 238 U. S. 143.

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determined by general principles, and it seems to us impossible to say that the rule adopted in Pennsylvania goes beyond what the Constitution allows."

In two cases, property owners who resisted special assessments were granted relief. Myles Salt Co. v. Board of Commissioners[89] found that an island was on such high ground that it could not possibly receive any advantage from a drainage improvement, and that therefore any assessment was a taking of property without due process of law. And Gast Realty & I. Co. v. Schneider Granite Co.[90] relieved the complainant from subjection to a method adopted by a city for assessing the cost of street paving, where the line of the land made to bear the burden zigzagged about in a fashion which led Mr. Justice Holmes to characterize the ordinance as "a farrago of irrational irregularities throughout." In Wagner v. Leser,[91] on the other hand, the situation was such that it was held proper to apply the foot-frontage rule in assessing the cost of pavement on abutters, and further that it was unnecessary to give notice and a chance to be heard as to the amount of benefit. Justices Pitney and McReynolds dissented.[92]

Several cases involved complaints against the procedure provided for assessing taxes. Bi-metallic Investment Co. v. State Board of Equalization[93] held that an order to make an increase in the assessment of all property within a given district was valid, although taxpayers had no other opportunity to be heard before the board issuing the order than that afforded by reason of the fact that the time of meeting is fixed by law. If individual notice were required in such cases, it would have to be given to every taxpayer in the district, since all were affected

[89] (1916) 239 U. S. 478. See 14 *Michigan Law Review* 502, and 1 *Southern Law Quarterly* 256.

[90] (1916) 240 U. S. 55. See 82 *Central Law Journal* 189 and 14 *Michigan Law Review* 419.

[91] (1915) 239 U. S. 207.

[92] For another case in which a special assessment was sustained, see Houck v. Little River Drainage District, (1915) 239 U. S. 254, which held that a maximum tax of 25 cents an acre could be imposed upon lands within a drainage district to defray preliminary expenses, even though some of the owners assessed may not be benefited by the completed drainage plans.

[93] (1915) 239 U. S. 441. See 29 *Harvard Law Review* 550.

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alike by the increase. "There must be a limit to individual argument in such matters," said Mr. Justice Holmes, "if government is to go on." So also in Embree v. Kansas City & L. B. Road District,[94] notice by publication was held sufficient in proceedings to determine whether a road district should be created, where the boundaries of the proposed district were published and could not be enlarged unless the owners of lands not previously included consented or appeared at a hearing. In Pullman Co. v. Knott,[95] a company which failed to make returns of its receipts as required by statute was held not entitled to complain of a provision in the tax law allowing the state comptroller on such default to estimate the receipts and add 10 per cent as a penalty. For more involved cases in which the statutory procedure was sustained see St. Louis & K. C. Land Co. v. Kansas City,[96] and Chapman v. Zobelein.[97]

Two important tax cases were based on a provision of the Kentucky constitution requiring uniform taxation in proportion to value. These were Greene v. Louisville & I. R. Co.[98] and Louisville & N. R. Co. v. Greene.[99] In both cases it was established that the property of the complainants was intentionally assessed at a larger percentage of its true value than was property generally, but all property, including that of complainants was assessed at less than its true value. The assessment on the complainants was enjoined as a violation of the constitutional provision of uniformity, although the result of the injunction was to sanction the violation of another provision requiring assessment at true value. The situation presented a dilemma, since the enforcement of either provision required the violation of the other. The court regarded the requirement of uniformity as the major one, to which the provision for assessment at full value was subsidiary. The dilemma was created because the assessment of railroad property was in the hands of a different board

[94] (1916) 240 U. S. 242.
[95] (1914) 235 U. S. 23.
[96] (1916) 241 U. S. 419.
[97] (1914) 237 U. S. 135.
[98] (1917) 244 U. S. 499. See 31 *Harvard Law Review* 307.
[99] (1917) 244 U. S. 522.

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from that which valued other property, and it was therefore impossible for the court to order the increase in the assessment of other property.

Federal jurisdiction was obtained in these cases by claims made under the equal-protection clause of the Fourteenth Amendment; but the court said that, having the case properly before it, it had power to dispose of every question in issue, and that since its interpretation of the Kentucky constitution sustained the objections of complainants, it was unnecessary to decide whether the same result would be required by the Fourteenth Amendment. The second case involved also some intricate computations in applying the "unit rule" to the assessment of that part of an interstate railroad located within the state. The methods adopted by the state board were found to be faulty in several respects. Justices Holmes, Brandeis and Clarke dissented in both cases.

The taxing power of the federal government was limited by two decisions establishing that a stamp tax on charter-parties[100] and on marine insurance policies[101] was a tax on exports and so within the constitutional prohibition on Congress, when the charter related only to the exportation of cargo to foreign ports, and the policy covered only such goods. The charter-party and the insurance policy were held to be essential to the exporting process, so that taxes thereon were in a substantial sense taxes on exports.

Objections to the national income tax of 1913 were considered and dismissed in four cases.[102] The progressive rate features were held not to be so arbitrary and unjust as to be wanting in due process. Likewise impeccable are the provisions imposing

[100] United States v. Hvoslef, (1915) 237 U. S. 1. See C. N. Goodwin, "United States v. Hvoslef: A Constitutional Source of National Revenue Impaired," 29 *Harvard Law Review* 469.

[101] Thames & Mersey M. Ins. Co. v. United States, (1915) 237 U. S. 19.

[102] Brushaber v. Union Pacific R. Co. (1916) 240 U. S. 1; Stanton v. Baltic Mining Co., (1916) 240 U. S. 103; Tyee Realty Co. v. Anderson, (1916) 240 U. S. 115; Dodge v. Osborn, (1916) 240 U. S. 118. See F. W. Hackett, "Constitutionality of the Graduated Income Tax Law," 25 *Yale Law Journal* 427. See also 4 *California Law Review* 336, 26 *Columbia Law Review* 530, 14 *Michigan Law Review* 680, and 64 *University of Pennsylvania Law Review* 498.

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a surtax on individual but not on corporate incomes; allowing individuals but not corporations to deduct from their gross income dividends from corporations whose incomes are taxed; limiting the amount of interest paid by a corporation which may be deducted from its gross income for the purpose of fixing its taxable income;[103] exempting individuals but not corporations on income up to $4,000; exempting certain organizations from the tax altogether; and applying the statute to income received before its enactment but subsequent to the date when the Sixteenth Amendment went into effect. The act was also acquitted of a number of other peccadillos charged against it by complaining taxpayers. It seemed to be conceded by the court, however, that a taxing statute of Congress might be so arbitrary "as to compel the conclusion that it was not an exertion of taxation, but the confiscation of property."

Chief Justice White's discussion of the effect of the Sixteenth Amendment is interesting from the standpoint of the objections urged against its ratification by Mr. Hughes, when governor of New York. His complaint was that the grant to Congress of power to tax incomes "from whatever source derived" conferred authority to tax incomes of state officials and incomes from state and municipal bonds. But any such interpretation is impliedly negatived by the position of the Chief Justice. He holds that Congress always had power to levy income taxes "in a general sense," and that the Sixteenth Amendment was necessary only because the Income Tax cases of 1895 had declared that the court must look to the source of the income taxed, in order to determine whether the tax though in form an indirect tax was in substance a direct tax, and therefore one requiring apportionment among the states according to population. The Sixteenth Amendment merely forbids the court to look at the source of the income taxed in order to determine whether the tax is direct. It leaves the general power to levy income taxes subject to all other previous limitations and therefore does not remove the restrictions imposed by the principle inherent in the federal

[103] A similar provision on the corporation tax of 1909 was sustained in Anderson v. Forty-two Broadway, (1915) 239 U. S. 69.

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system of government, that neither the states nor the nation may tax the necessary instrumentalities of the other.

IV. EMINENT DOMAIN

In three cases objectors to eminent domain proceedings failed to persuade the court that the taking was not for a public use. Hendersonville Light & P. Co. v. Blue Ridge R. I. Co.[104] sustained the condemnation of certain water rights by a street railway company, in spite of the fact that the contemplated works would generate more power than was necessary for the running of the road. The company's charter, however, authorized it to sell surplus power, and the taking was found to be with the intent in good faith to carry on the public business authorized by the charter. O'Neill v. Leamer[105] sanctioned a taking of land for a drainage ditch, where the district drained embraced a large area with many proprietors, and the state court had found that the undertaking did not serve private interest alone, but was conducive to public health, convenience and welfare. In Mt. Vernon Woodbury Cotton Duck Co. v. Alabama I. P. Co.[106] a similar judgment was passed upon a taking of land, water and water rights for the manufacture, supply and sale to the public of electric power produced by water as a motive force.

The issue whether there was in law a taking of property arose in several cases. Willink v. United States[107] held that an owner of a wharf and a marine railway suffered no taking of his property by being prevented from rebuilding his wharf or renewing the piling which protected his railway, where both wharf and piling were below the highwater line and within the harbor area defined by the secretary of war under authority from Congress.[108] In Cubbins v. Mississippi River Commission[109] the owner of

[104] (1917) 243 U. S. 563. See 54 *National Corporation Reporter* 902.
[105] (1915) 239 U. S. 244.
[106] (1916) 240 U. S. 30.
[107] (1916) 240 U. S. 572.
[108] To a similar effect is Greenleaf Johnson L. Co. v. Garrison, (1915) 237 U. S. 251. See 28 *Harvard Law Review* 806.
[109] (1916) 241 U. S. 351.

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riparian land along the Mississippi River was held entitled to no damages for an alleged taking which consisted of an occasional overflow of his land caused by the increase in volume of the stream due to the erection of levees to confine the river in its natural course. But similar injuries due to the construction of a lock and dam as an aid to navigation were held in United States v. Cross[110] to constitute takings which entitled the riparian owner to compensation. The works in question were said to be not mere improvements of the natural waterway, but to amount to the construction of an artificial channel.

Three cases withheld comfort from landowners who appealed for more compensation than was allowed. Provo Bench Canal & I. Co. v. Tanner[111] refused to set aside the judgment of a state court awarding only nominal damages for a taking incident to the enlargement of an irrigation canal, where the state court recognized that compensation must be paid for any damage suffered, but held that there was no evidence of any such damage. Similarly in Brand v. Union Elevated R. Co. [112] a state court was held justified in refusing to submit to a jury the question of damages on account of the construction of an elevated road, where the only testimony as to the comparative market value of the abutting lot before and after the improvement showed that no change in value had occurred. Justices Day, McKenna, Lamar and Pitney dissented, assigning as the reason that there was testimony as to the actual injury caused by the road, and that the disposition of the case on the ground of the absence of proof of depreciation in the market value of the land in effect permitted the road to offset the specific damages done to complainant by the general benefits shared by him in common with the public. The majority do not discuss the validity of this proposition of law, but dispose of the case on the technical ground that the evidence before the court did not call it into play.

An ingenious contention of a landowner was rejected in New

[110] (1917) 243 U. S. 316. See 30 *Harvard Law Review* 764.
[111] (1915) 239 U. S. 323.
[112] (1915) 238 U. S. 846. See 81 *Central Law Journal* 145.

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York v. Sage.[113] The land was taken for the Ashokan reservoir.[114] Mr. Sage claimed for it a special value due to the fact that it was so situated in a water-shed that it was adapted for use as a reservoir. The court recognized that account should be taken in general of enhancement due to the possibility of the most profitable use to which the land might be put, but held that such elements of value should be considered only so far as the public would have considered them if the land had been offered for sale in the absence of the city's exercise of the power of eminent domain. Since the availability of the land for a reservoir was dependent on the acquisition of many other parcels by the exercise of the power of eminent domain, the alleged reservoir value of each lot was added to it by the city's act in uniting it to the other lots, and was therefore not a value which each lot possessed in the hands of its owner before being taken.

(*To be concluded*)

[113] (1915) 239 U. S. 57.

[114] Ramapo Water Co. v. New York, (1915) 236 U. S. 579, arose out of the same project, from which the complainant sought to restrain the city on the ground that it interfered with its vested rights acquired by a charter giving it power to store and supply water. The company had proceeded no further under its charter than to file maps and acquire options on some lands in the district to be taken for the municipal reservoir. The Supreme Court disposed of the contention by saying that in the absence of a decision on the point from the state court it would refuse to believe that the complainant had acquired any vested rights by what it had done under its charter.

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LEGISLATIVE NOTES AND REVIEWS

Moratory and Stay Laws.[1] A moratorium is an extension of credit or a legal authorization postponing the payment of debts for a designated period of time, during which no action can be maintained for the collection of the debt; it is designed to protect debtors by deferring the maturity of obligations and to protect creditors by temporarily suspending or retarding the operations necessary to preserve their rights as against third parties. Stay laws affect remedies only as applied to matured obligations and perfected rights. Moratoria are either minor or major. A minor moratorium applies only to bills of exchange; major moratoria include all other debts except those expressly excluded. The authority to declare moratoria is derived from the prerogative or from express legislative grant, and their promulgation has been more frequent in the civil law countries of continental Europe and Latin America than in the common-law countries of the British Empire and the United States. Prior to the European war, the last moratorium in England was declared in 1806; a moratorium was declared on August 2 and 6, 1914, under authority of the Postponement of Payments Act of August 3, 1914.

It has generally been assumed that moratory laws in the United States would be impossible owing to the repugnance to certain well-known constitutional postulates. However, the results which moratory laws are designed to secure have been achieved by indirection, such as the temporary closing of courts and the declaration of legal holidays. During the Civil War, twenty-three states—including Alabama, Arkansas, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennes see, Texas, Virginia and Wisconsin—enacted statutes authorizing post ponements of proceedings in action against persons engaged in mili tary service. During the period of Reconstruction, seven states—in cluding Alabama, Georgia, Mississippi, North Carolina, South Caro-

[1] The writer acknowledges his indebtedness in preparing this note to an excellent little pamphlet entitled "Moratory Legislation in the United States," prepared by Mr. Frederic C. Dunham, attorney for the Association of Life Insurance Presidents.

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lina, Texas and Virginia—enacted laws authorizing the stay of legal proceedings or the postponement of payments either for definite or indefinite periods of time. Under the Articles of Confederation, and prior to the ratification of the Constitution of the United States, many states had enacted statutes designed to safeguard the rights of debtors. The disastrous effects of some of these laws probably led to the incorporation of paragraph 1, Section 10, Article I in the Constitution which prohibits the passage of laws impairing the obligation of contracts, and similar provisions in the several state constitutions relative to the validity of contracts, retrospective and stay laws. The conclusions which are deducible from the judicial construction of the stay laws of the Civil War period, although somewhat contradictory, are that if the remedy is merely a postponement for a definite and reasonable period of time, a stay law is inoffensive; if the period of time is indefinite and unreasonably long, a stay law is void as postponing payment and taking away all remedy during the continuance of the stay.[2]

By an act approved March 8, 1918, Congress enacted a moratory and stay law, known as the soldiers' and sailors' civil rights act, which is designed to enable the United States more successfully to prosecute the war by extending protection to members of military and naval establishments for the purpose of preventing prejudice or injury to the civil rights of such persons during the continuance of their term of service and to enable them to devote their entire energy to the military needs of the nation.

During the year 1917, before the passage of the national moratory and stay law, eight states—Iowa, Maine, Maryland, Massachusetts, Mississippi, Oregon, Texas and Wisconsin—had enacted similar statutes. A Michigan act dates back to 1911 and a Pennsylvania act to 1915. By virtue of the provisions of these laws, any action which is pending or which may accrue against any person who is enlisted in the military or naval forces of the United States, may, at the request of the defendant, be continued, without cost to either party, until the termination of the war or for a designated period thereafter. The Act of Congress, which is general in its scope, in all probability supersedes the state laws.[3]

[2] Breitenbach v. Bush, 44 P. 313; Boice v. Boice, 27 Minn. 371; Edwards v. Kearsey, 96 U. S. 595.

[3] Iowa, ch. 380, Laws 1917; Maine, ch. 273, Laws 1917; Maryland, ch. 23, Laws 1917; Massachusetts, ch. 342, Laws 1917; Michigan, Sec. 62, ch. 72, Laws 1911; Mississippi, ch. 36, Laws 1917; Oregon, ch. 275, Laws 1917; Pennsylvania, ch. 47, Laws 1915; Texas, Approved September 17, 1917; Wisconsin, ch. 499, Laws 1917.

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The congressional moratory and stay law[4] is to continue in force until six months after the termination of the war and it applies to all persons in the naval and military service from the date of entering active service and terminates with discharge, death, or expiration of the act. This law is extensive and is designed to apply specifically to general relief; rent, installment contracts and mortgages; insurance, taxes and public lands.

Rent.—The wife, children or other dependents of any person regularly enrolled in the military service cannot be evicted from premises for which the agreed rent does not exceed $50 per month and which is occupied chiefly for dwelling purposes, during the continuance of such service. The secretary of war or of the navy, under rules regularly promulgated, may order a reasonable proportion of pay allotted to any person in the service to discharge the rent of such premises.

Installment Contracts.—Where real or personal property is purchased on the installment plan and payments or deposits have been made, the recipient is deprived of his right to rescind or terminate the contract or to resume possession of the property for the nonpayment of any installment falling due during the period of military service.

Mortgages.—Mortgages executed to secure the payment of real or personal property are subject to adjustment by the court having jurisdiction, which may either stay the proceedings for the foreclosure of the mortgage or make such disposition of the matter as will be equitable to all parties concerned.

Insurance.—No insurance policy or policies, not in excess of $5000, which have not lapsed for the nonpayment of premium before the commencement of the period of military service of the insured and on which there are no loans in excess of 50 per cent, shall lapse or be forfeited for the nonpayment of premiums during the period of service and for one year thereafter. United States bonds are issued to the insurance companies as security for the defaulted premiums with interest, and the United States, to indemnify itself against loss, takes a first lien upon any policy receiving the benefit of this act.

Taxes and Assessments.—Real property cannot be sold for taxes or special assessments by reason of default in payment, when used by a person in the military service or his dependents, until six months after the termination of the war.

[4] Public, No. 103, 65th Congress, H. R. 6361.

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Public Lands.—The rights to public lands initiated or acquired prior to the beginning of military service under the homestead, desert-land or mining-land laws cannot be forfeited or prejudiced by reason of absence, failure to perform the work necessary to make improvements, or any other act required by law in normal times.

CHARLES KETTLEBOROUGH.

Military Absent-Voting Laws.[1] Eighteen states[2] now have laws in force which permit qualified voters in military service to vote outside their home precincts. Four of these states (Michigan, Ohio, Tennessee and Virginia) grant this privilege in general absent-voting laws which expressly include persons in military service. Michigan amended her general absent-voting laws in 1917 so as to permit absent-voting by persons "in the actual service of the United States," thus not restricting the privilege to military absentees. In a number of other states the general absent-voting law of the North Dakota type, although intended primarily for civilians, do not expressly restrict absent-voting to that class and therefore might be so construed as to extend the privilege to persons in military service. In that case, the total number of states making provision for military absent-voting would be not far from thirty. Three other states (Connecticut, Massachusetts and Vermont) passed laws in 1916 which have since expired because they expressly restricted military absent-voting to the presidential or general election of 1916, and, in Vermont, to the preceding September primary also.[3]

The geographical distribution of the above-mentioned laws which make special provision for military absentees is interesting, and affords a contrast to the distribution of general absent-voting laws. The latter have been enacted almost exclusively in states west of the Alleghenies, Vermont and Virginia being the only exceptions, although Massachusetts in 1917 adopted a constitutional amendment permitting the legislature to enact such a law; whereas twelve states, or more than half of those mentioned above as making definite provision for persons in military service, are among the oldest eastern states. The

[1] Absent-voting laws of the civil war period are discussed at some length in J. H. Benton's *Voting in the Field* (Boston, 1915).

[2] Delaware, Illinois, Kansas, Maine, Michigan, Minnesota, Missouri, Nevada, Nebraska, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia.

[3] *Journal of the House of Representatives. . . . Connecticut, Special Session, 1916*, pp. 14 ff.; *General Acts of Massachusetts, 1916*, pp. 591 ff; *Laws of Vermont, Special Session, 1916*, pp. 468, 470.

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reason for this greater popularity of military absent-voting laws in the east than in the west, while the reverse is true of the civilian absent-voting laws, is not at once apparent.

Most of the military absent-voting laws were enacted in 1916 or 1917; but the law of Pennsylvania and the detailed constitutional amendments in Maine and Rhode Island date back to 1864; the law of Kansas to 1868; that of New Jersey to 1898; and that of Nevada to 1899.

The analysis which follows is confined to the fourteen state laws now in force and intended solely for the benefit of persons in military service,[4] and therefore does not include the four general absent-voting laws mentioned above, such laws having few if any provisions for military absentees different from those which apply to civilians.

The privilege of absent-voting is extended in ten states[5] to persons absent from their home precinct, while four states—Maine, Minnesota, Nevada and Rhode Island—restrict the privilege to those who are outside the state.

The service for which absent-voting is permitted must be (1) the "military service of the United States," in Nebraska and Rhode Island, but Nebraska and Maine expressly withhold the privilege from "persons in the regular army of the United States;" (2) the military service of the state or of the United States, in Delaware, Illinois and West Virginia; (3) "the service of the United States volunteers" beyond the limits of the state, in Nevada; (4) "actual military service" under a requisition from the President or by authority of the commonwealth, in Pennsylvania; (5) state or national service "in time of war," in New York, New Jersey, Oklahoma and Rhode Island; (6) in "the militia or volunteer service of the State or the United States," in Kansas; and

[4] *Revised Statutes of . . . Delaware, 1915*, ch. 60, pp. 885 ff. *Laws of the State of Illinois, 1917*, pp. 440 ff. *General Statutes of Kansas, 1915*, ch. 3, pp. 852 ff. *Revised Statutes of . . . Maine*, 6th revision, 1916, ch. 7, pp. 170–171, and the Constitution of Maine, Art. II, sec. 4, and Art. IX, sec. 12. *Special Session Laws of Minnesota, 1916*, p. 3 ff. *Laws of Missouri, 1917*, pp. 276 ff. *Laws of Nebraska, 1917*, pp. 395 ff. *Revised Laws of Nevada, 1912*, I, sec. 1887 ff. *Compiled Statutes of New Jersey, 1910*, II, pp. 2144 ff. *Laws of the State of New York, 1917*, III, ch. 815, pp. 2763 ff, amending the *Consolidated Laws of New York, 1909*, II, ch. 17, pp. 1008 ff. *Oklahoma Session Laws, 1917*, pp. 247 ff. *Purdon's Digest of the Laws of Pennsylvania*, (Stewart's 13th edition) II, 1367 ff. *General Laws of Rhode Island, 1909*, p. 114, and the Constitution of Rhode Island, Amendment 4. *Acts of West Virginia, 2d Extra Session, 1917*, pp. 54 ff.

[5] Delaware, Illinois, Kansas, Missouri, Nebraska, New Jersey, New York, Oklahoma, Pennsylvania, and West Virginia.

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(7) in the national guard "when called in the service of the national government," in Minnesota. Although perhaps included by implication, naval service is expressly mentioned only in the laws of New York, New Jersey and Oklahoma.

Military absent-voting is expressly restricted to "general elections" in Illinois and Missouri; to primary or general elections in West Virginia; to general, special or local elections in New Jersey and Oklahoma; to general or presidential elections and special elections to fill vacancies, in Pennsylvania—but does not apply to the election of members of the council or ward or division officers in the city of Philadelphia; to general or special elections in Nebraska; to "annual elections" in Kansas; and in Minnesota to general elections, but if a municipal election occurs on a day different from general elections, a municipality may avail itself of this law to the extent of having the members of any company of the national guard organized in that city vote for municipal officers, provided an ordinance to that effect is adopted and the city pays the expense connected with such election.

The officers for whom the absentee may vote are named in some of the laws: in Maine for governor, state auditor, state senator and representative, county officers and presidential electors, senators and representatives in Congress; in Rhode Island for presidential electors and "general officers of the State;" in Illinois for all state officers and "on all State-wide questions;" in Nevada for all officers for whom the absentee might vote at home; in Missouri for all officers and upon all issues on which the absentee would be entitled to vote at home; and in Delaware and New York the voter is entitled "to vote as fully as if he were present" in his home precinct, including, in New York, the right to vote on constitutional amendments.

Only two states (Missouri and West Virginia) require any preliminary action on the part of the absentee, aside from registration, when that is required, in order to qualify for absent-voting. In Missouri the voter makes application in person or by mail not more than fifteen nor less than five days before election for a military absent voter's ballot. The other provisions of the Missouri law conform closely to the North Dakota type of general absent-voting law. In fact Missouri is believed to be the only state having in force both the Kansas type of absent-voting law for civilians and the North Dakota type for persons in military service. In West Virginia the voter must give notice of his intention to vote by registered mail to the election registrar of his precinct not less than thirty nor more than sixty days before a primary or general election.

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With respect to the time when military absentees may vote, seven of the states provide that the voting shall occur on the day of the election in the home state—Delaware, Kansas, Maine, Minnesota, Nevada, Pennsylvania and Rhode Island. Under the New York law, the vote may be cast on the day of general or special elections in that state, or on any secular day within ten days next prior thereto, fixed by proclamation of the commanding officer. The date may be changed because of military necessity, but in no case shall it be later than the day of the general or special election; and the date of voting need not be the same for all military or naval units. In the Nebraska law the ballot must be marked not less than ten nor more than thirty days before the first Monday preceding any special or general election; in the Illinois law, not less than five nor more than twenty days prior to the general election, the exact date being fixed by proclamation of the commanding officer. The Missouri law requires that the ballots of absent voters must be returned to the county clerk or other proper official for forwarding to the precincts not later than sixty-four hours preceding the opening of the polls. New Jersey and Oklahoma provide for proxy-voting on the day of election; while in the West Virginia law no date is specified, although the ballots must be returned by mail in time to be counted at home on election day.

With respect to the place where military absent-voting takes place, most states provide for opening polling places wherever a company or regiment is located. The laws of Delaware, New York and Pennsylvania further specify that these polling places shall be located at the quarters of the captain or other officer in command of each company concerned. Under the Kansas law, the places are to be designated on the morning of election day by the commanding officer. Under the Missouri law the voter may mark his ballot before any official qualified to administer oaths; while under the West Virginia law the marking must be done in the presence of the commanding officer or of some commissioned officer duly delegated for such duty. Where proxy-voting is authorized, as in New Jersey, Oklahoma, and in Pennsylvania for small detached units, the soldier's ballot, previously prepared by him, is presented by the proxy to the regular election officials in the absentee's home precinct while the polls are open on election day. Where the voting takes place in the field, officers above the rank of captain and soldiers away from their company on detached service are usually permitted to vote at the nearest military polling place, except in Pennsylvania, where they are required to vote by proxy at home.

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The officers in charge of the military polling places are either designated by title in the laws or else are elected by the soldiers. Thus in the Maine and Nevada laws, the three ranking officers of the company or regiment are designated as election officers; and in the Rhode Island law, the officer in command of the regiment or company is placed in charge. The laws of Delaware, Illinois, Kansas, New York and Pennsylvania provide that at the opening of the polls the qualified voters then present shall then and there by *viva voce* vote elect three (in New York, four) of their number to act as judges or inspectors of election. In New York and Pennsylvania they are to be selected to represent the leading parties. In the Kansas law two clerks are also to be elected in the same way; while in the Pennsylvania and New York laws the clerks are appointed by the judges from among those present at the opening of the polls. All officers are sworn to the faithful discharge of their duties.

Other laws provide for the appointment of commissioners to assist in taking the soldier vote. Thus in the Delaware law provision is made for appointment by the governor of two "election messengers" for each military encampment on a bipartisan basis, whose duty it is to take to the encampments the ballots, polling lists and other necessary material for the election. During the voting, they apparently have no duties to perform; but after the polls close they are charged with the duty of collecting the votes, certificates and poll lists and returning them to the proper state official. In Pennsylvania the governor may appoint as many commissioners as he deems necessary, not exceeding one for each regiment, and may apportion the work among them. Their duties are very similar to those of the Delaware messengers, and supplementary to the work of the elected polling officers.

In Minnesota the governor may likewise appoint one or more "voting commissioner" for each regiment outside the state, or likely to be outside, on election day. These commissioners are permitted to avail themselves of the privilege of absent-voting along with the soldiers, a provision not found in other laws. They are also required to appoint challengers for each party selected by the party voters in each company, and to decide any challenges that may be made. In Nebraska two commissioners, one from each of the two leading parties, are appointed by the governor for a two-year term. Apparently the Nebraska and Minnesota commissioners have full charge of the actual conduct of the election. The Nebraska law also requires the commissioners to certify under oath that they "did not attempt to influence

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any soldier whose vote they have received . . . for or against any candidate." The Missouri and West Virginia laws which provide that each voter shall send his ballot home by mail to be counted there, and the New Jersey and Oklahoma laws permitting voting by proxy, of course make no provision for polling places and election officers in the encampments.

The preparation of voting lists to be used in these military elections is assigned to the secretary of state in Illinois, Kansas, Minnesota, Nevada and New York. In some instances it is provided that he shall receive assistance from the adjutant-general. In Delaware the lists are prepared by the regular registration officials. In Pennsylvania, Rhode Island and Maine no mention is made of voting lists prepared in advance; but Rhode Island requires each town clerk within five days after an election to certify to the secretary of state a list of voters absent in military service, which is doubtless used for checking purposes in the final canvass of the votes. Under the Maine law, the polling officials must be satisfied of the age, citizenship and residence of any person claiming the right to vote; and if that right is challenged, they may examine him under oath. In the case of voters from Missouri and West Virginia who vote by mail, and of voters from New Jersey and Oklahoma who vote by proxy, the regular voting list in the home precinct is of course used.

No provision is made for an official ballot in the absent-voting laws and constitutional provisions of Maine, Rhode Island, Kansas and Pennsylvania, as these were adopted before the day of the Australian ballot. The same is true of the proxy system of New Jersey and Oklahoma. The Delaware law provides that the ballots shall be "the style of ballot used in this State just prior to the adoption of the Australian ballot system," and are to be uniform in size and color. Four states require a distinctive label or title for the soldiers' ballots: in New York they are designated as "official war ballots," in West Virginia as "absent voter's ballot," and in Nebraska as "Nebraska soldier vote."

Illinois, Nebraska, Nevada and New York authorize the omission from the ballot of the names of candidates for certain offices. Thus in Nevada, the names of candidates for state senator, county judge, representative and justices of the peace need not be printed under the title of the office but the spaces for the names of candidates are to be left blank. The New York war ballot must bear the names of all nominated candidates to be voted for by all the voters of the state.

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The names of candidates for local offices may also be printed if practicable; but in any event the titles of the local offices must be printed for which the voter might vote if he voted at home. The Nevada secretary of state in preparing the ballots may omit the names of candidates for county and township offices, if he does not know them. Where the office titles are printed on the ballot, the voter is permitted to write in the names of the candidates of his choice.

Only two states, Delaware and New York, require the preparation and posting of lists of candidates nominated for the various offices to be voted for; and only one state, Nebraska, provides for the printing of sample ballots for the soldiers. The secretary of state is the officer most commonly charged with the duty of preparing ballots, but in the Minnesota law the county auditor is required to send to the secretary of state two proper county ballots for each absent voter from that county and two proper city ballots for each voter absent from any city in the county, the latter being furnished to the auditor by the city clerk. The West Virginia absent voter's ballots used in general elections is printed on a different colored paper from that of the regular ballots.

Most of the military absent-voting laws contain regulations relating to the voting process, keeping and certifying polling lists, challenging voters, counting, canvassing and preserving the ballots too detailed and varied even to be summarized here. Few of the laws make definite provision for secrecy in voting, although the Illinois and New York laws provide that after a voter is given a ballot he "shall then retire to some convenient place" to mark it; and the Minnesota law says that the voter shall mark his ballot as he would mark it were he present and voting physically in his home precinct. The Maine constitutional amendment, adopted in 1864, and the Kansas law of 1868 require the voter to write on the back of his ballot his home address and the military unit to which he belongs. The Rhode Island constitutional amendment goes further and requires the voter's full name on the ballot in addition to the foregoing requirement. In the New Jersey and Oklahoma proxy laws there is some approach to secrecy in the requirement that the voter's ballot shall be sent to the proxy to be cast at home on election day in a sealed envelope which must not be opened until after its acceptance by the polling officers on election day. The proxy either must, or may be required to, make oath to the fact that the ballot envelope has not been opened by him or by any other person. The hours during which the polls must remain open are

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specified in a few laws. In the Pennsylvania statute they are to open "as early as practicable" on election day, and remain open at least three hours; and if necessary to accommodate the voters, they may be kept open until 7 p.m. The Illinois and New York laws are practically alike in requiring that the polls remain open at least three hours and as much longer as may be necessary, but in no case are they to be kept open later than sunset. Under the Delaware law, the polls must be open from 10 a.m. to 6 p.m.

Six of the states require that ballot envelopes be furnished the voters along with the ballots. After marking his ballot, the voter seals it up in this official envelope before it is deposited in the ballot box. In some instances on the envelope are printed blank spaces to be filled in with the voter's name, home address and military unit, and also an affidavit as to his voting qualifications which must be subscribed by the voter before the ballot may legally be accepted by the polling officials. In this connection the New York law has the unique provision that the voter must swear that he has not received, and does not expect to receive, any compensation or reward for giving or withholding his vote, and has made no promises to influence the giving or withholding of any such vote, nor has made or become directly interested in any bet or wager depending on the result of that election; and that he has not been convicted of bribery or any infamous crime, or, if so, has been pardoned and restored to all the rights of a citizen.

The counting of the ballots cast for each candidate is required by the laws of Maine, Nevada, Pennsylvania and apparently Kansas to take place in the encampment where the votes are cast; but under the laws of the other states the actual count takes place within the voter's home state. An example of the former practice is found in Maine where the military election officers are required to "sort, count and publicly declare the votes at the head of their respective commands on the day of election, unless prevented by the public enemy, and in that case as soon thereafter as may be." The result is certified to the secretary of state. The Pennsylvania law requires each ballot to pass, in being counted, through the hands of each of the three election officers in turn, the third of whom strings all from the same county "upon a separate thread," and thereafter they are returned to the proper state authorities for canvassing by local boards. In the case of Illinois, Minnesota and New York, where ballot envelopes are used, the military election officers merely count the total number of ballots cast, certify the number along with the poll books, and send the ballot envelopes unopened

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to the secretary of state who distributes them among designated state or local canvassing boards. By these canvassing boards the envelopes are opened and the votes cast for each candidate ascertained and recorded. The New York law has the most elaborate counting provisions of any, but these are not essentially different from those in the laws of Illinois and Minnesota. In the mail-voting system of Missouri and West Virginia and the proxy system of New Jersey and Oklahoma, the ballots are of course counted in the voter's home precinct.[6]

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Woman Suffrage in Foreign Countries. The rapid extension of the suffrage to women, not only in the United States but also in many foreign countries, may confidently be predicted as one of the important consequences of the great world war. Some important victories for the suffragist cause, directly traceable to conditions produced by the war, have already been achieved, notably in Great Britain. By presenting a chronological summary of the progress of the suffrage movement thus far, and an inventory of the present political status of women in foreign countries, it is hoped to prepare the way in some measure for an accurate appraisal of the ultimate influence of the war in this direction.

The first extensions of suffrage to women in foreign countries begin about the time of our Civil War. Sweden apparently has the distinction of being the first country to grant women the right to vote. In 1862, municipal suffrage was granted to taxpaying widows and spinsters. The next year Finland, across the Baltic from Sweden, granted local suffrage to taxpaying women living in country districts, and about ten years later (1872) extended it to taxpaying women residing in cities. Bohemia, about 1864, granted to women taxpayers and to women in the learned professions the right to vote by proxy, not only in municipal elections, but also for members of the provincial diet; and also made them eligible as members of that legislative body. At the close of the same decade (1869), widows and spinsters who were householders were given municipal suffrage in England and Wales; and the next year they were given the right to vote for school boards and made eligible

[6] A general order of the war department, dated June 28, states that very few state laws provide a practicable method of taking soldiers' votes under prevailing conditions in Europe; and that these laws will need to be amended so as to validate votes cast under conditions which the department has found necessary to prescribe.

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to membership. These provisions were the first victory in the sixty-year struggle which has recently culminated in the winning of the parliamentary franchise.

Aside from the concession of local suffrage to English women and municipal suffrage to Finnish women in cities, the decade of the seventies witnessed but slight extensions of woman suffrage. Early in the decade, Prussian women property owners were permitted to vote by proxy for members of the *Kreistag*, the local legislative body in the important administrative subdivision of the kingdom called the *Kreis* or Circle; and in 1877, New Zealand granted women the school suffrage.

The decade of the eighties saw many more gains for woman suffrage than any other decade of the last century. With the exception of Iceland, where widows and spinsters who were householders and self-supporting were given local suffrage in 1882, all of these gains occurred within the British Empire. Scotland and the Isle of Man led in 1881; the former granting municipal suffrage to women on the same terms as men, and the latter giving women property owners full suffrage for the legislative body of that political atom. In England and Wales the county suffrage was conferred on women in 1888.

But the chief gains in the eighties are to be found in the overseas dependencies of England, especially in Canada. In 1884 Quebec and Ontario granted municipal suffrage to property owning widows and spinsters, and in Ontario they were made eligible to sit on school boards. Two years later (1886) New Brunswick followed Ontario's example, and Nova Scotia gave municipal suffrage to all property owning women except those whose husbands were voters. The same year New Zealand extended municipal suffrage to all women. In 1888 Prince Edward Island, British Columbia, Manitoba and Alberta granted municipal suffrage to property owning widows and spinsters; and in Prince Edward Island they were also made eligible to municipal offices. In the same year Saskatchewan granted municipal suffrage to property owning women.

In the closing decade of the last century, the progress of the woman suffrage movement was comparatively slight, so far as extensions of the suffrage are concerned. In 1892, taxpaying women in the Isle of Man were given full legislative suffrage. Two years later (1894) women were given the right to vote for members of the parish and district councils in England and Wales, and were made eligible as members of those bodies. In 1898 the women of Iceland were given municipal suffrage on the same terms as men. The same year saw the

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first concessions to women in France, where women engaged in commerce were given the right to vote for judges of the tribunals of commerce.

But the most important suffrage gains of this decade took place in Australasia. In 1893 New Zealand extended full suffrage to all women, not merely for municipal elections but for members of the colonial legislature, and also made women eligible to all elective offices except the legislature. New Zealand was thus the first country to grant women complete suffrage. In 1895 South Australia gave women full suffrage and made them eligible to the colonial legislature. South Australia and Queensland (1905) are at present the only Australian states in which women are eligible to membership in the state legislature; and in no Australian state do they enjoy the right to sit in municipal councils. In 1900, full state suffrage was granted women in West Australia.

The movement thus begun in Australia continued during the first decade of the present century. When the Australian Commonwealth was formed in 1901, women were given the national parliamentary suffrage and made eligible to both houses of the Commonwealth parliament. In 1902 New South Wales gave the state legislative franchise to women; and the next year Tasmania did likewise, followed by Queensland in 1905 and Victoria in 1908.

In the mother country, too, and also in continental Europe there were important extensions to the political privileges enjoyed by women. In the United Kingdom by 1907, women had been given the right to vote in practically all local elections, and in that year they were made eligible to boards of guardians for the relief of the poor, to borough and county councils, with the exception of the London County Council, and as mayors of boroughs. From that time the woman suffrage campaign in England was directed toward securing the parliamentary franchise.

Although Sweden had granted municipal suffrage to taxpaying widows and spinsters as early as 1862, Scandinavian countries took no further steps toward enfranchising women until 1901. In that year Norway granted municipal suffrage to taxpaying women and made them eligible to serve on councils. Six years later (1907) full suffrage was granted to taxpaying women and they were made eligible to parliament; and in 1910 the municipal suffrage was extended to all women, by removing the taxpaying qualifications. Denmark in 1908 granted municipal suffrage to taxpaying women and the wives of male taxpayers,

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and made them eligible to municipal offices. The same year Sweden and Iceland extended municipal suffrage to all women on the same terms as men. Finland in 1906, as an outgrowth of opposition to Russian bureaucracy and after an active campaign on the part of the women themselves, granted them the full parliamentary franchise and made them eligible to parliament. Since that date, from sixteen to twenty-five women had been members of the Finnish parliament at every session down to the opening of the world war.

In 1909 Quebec slightly extended the suffrage by granting it to widows and spinsters who were householders. The next year three minor suffrage gains were recorded. In Belgium and Italy women were permitted to vote for members of the board of trade, but in Italy this was restricted to women who are themselves engaged in trade. In Belize, British Honduras, women were granted the right to vote for members of the town council. In 1911 women in Ireland were made eligible to membership in city and county councils; in Alberta the municipal franchise was extended to all taxpaying women, whether married or unmarried, and they were declared eligible as members of school boards; British Columbia also extended the municipal suffrage to property owning married women; and Geneva and Zurich in Switzerland gave women the right to vote for members of the board of trade and made them eligible as members. In 1913 Norway granted full parliamentary franchise to women, being the first fully independent state to do this. The next year municipal suffrage was conferred on women in the provinces in the South African Union. The same year recorded the first suffrage gains in South America, when Santa Fé, a state in the Argentine Republic, granted full voting rights to women.

This brings the progress of the woman suffrage movement down to the opening of the great war. Summing up the results of the movement to that date we find that no less than thirteen countries or states had granted women the right to vote, either directly or by proxy, for members of the national, state or provincial legislative body; and that in most cases this privilege either included or was preceded by permission to vote for and to hold municipal and other local offices. In twenty-five other states, countries or cities, women enjoyed municipal suffrage in one form or another.

In addition to these achievements, women had been granted the suffrage in various other parts of the world, although it is difficult to determine the exact date in each case. Thus in Bosnia and Herzegovina, women property owners could vote by proxy for all officers

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including members of the legislature. In Siam women enjoyed municipal suffrage; in India and Burmah there were cities where women property owners had the right to vote on municipal questions; in Russia, women landowners could vote for members of the village council; and in the Canton of Berne, Switzerland, real estate owning women had the local suffrage. It is quite possible that other places ought to be included in a complete list.

It is of course too early to appraise the influence of the world war and woman's part therein upon the suffrage movement. The first effect appears to have been a check upon the movement in Sweden. A government measure giving women the parliamentary franchise had passed the lower branch of parliament when the war came on and caused the measure to be laid aside. At the same time a bill was passed making women eligible to all offices for which they had the right to vote. In 1915 Denmark granted full suffrage to all citizens of good reputation and twenty-five years of age, who were not paupers, at the same time making women eligible to all offices. The same year Iceland gave complete suffrage to all women.

For some time before the war, Holland permitted women to vote in proceedings of the dike associations, if they were taxpayers or owned property adjoining the dike. In 1916 a constitutional amendment was passed authorizing parliament to extend complete suffrage to women and make them eligible for provincial councils, for parliament and for the council of state. The necessary legislation to make this grant of power effective has apparently not been enacted. The same year Norway made women eligible to the national council of state. But the most important gains in 1916 occurred in western Canada and seem largely due to the war. Manitoba, Saskatchewan, Alberta and British Columbia granted full, provincial suffrage to women. In Alberta women were made eligible to all offices for which they might vote, but in Manitoba they are still ineligible for the municipal council and parliament, although eligible for school boards. In 1917, Ontario extended the full provincial suffrage to women, but they are still ineligible to seats in the provincial legislature.

Before the election of 1917, the Dominion parliament conferred the parliamentary franchise on certain classes of women. The Military Voters Act (ch. 34) gives the right to vote to every person, whether male or female, who being a British subject, whether or not ordinarily resident in Canada and whether or not an Indian, has gone on active

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service in the Canadian naval or military forces, or has while within Canada joined the British aviation or motor boat patrol service. The War Times Elections Act (ch. 39) gives the right to vote to every female who has the provincial qualification as required in the case of males and is the wife, widow, mother, sister or daughter of any person, male or female, who is serving or has served with the naval or military forces of Canada or Great Britain in the present war.

The greatest suffrage victory of all has come early in the present year (1918) and is directly traceable to the important part played by the women of the United Kingdom in the prosecution of the war. In February Parliament enacted a new suffrage law which extends the parliamentary franchise to about six million women. The age qualification for the newly enfranchised women is fixed at thirty years. Women of that age who come within any of the following classes are granted the right to vote for members of the house of commons, although without the right to sit therein themselves: (1) women who already enjoy municipal suffrage; (2) women who are wives of men having municipal suffrage; (3) women who are graduates of a university; (4) women who are engaged in Red Cross or similar work, or in nursing or other national service, either at home or abroad, and who but for the war would have been qualified to vote. This closes one of the longest and most dramatic chapters in the history of the equal suffrage movement.

Altogether at the present time there are eleven foreign countries or places in which women may vote in municipal or other local elections, and twenty-one countries or states—counting the United Kingdom as one—in which women may vote for members of the provincial, state or national legislative body; and in Sweden, Holland and France, it seems probable that the parliamentary franchise will be extended to women in the near future.

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JUDICIAL DECISIONS ON PUBLIC LAW

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Appropriations to Sectarian Schools—Constitutionality. Trost v. Manual Training School for Boys (Illinois, February 20, 1918, 118 N. E. 743). The plaintiffs in this case asked for an injunction to restrain the payment of county funds to certain Catholic institutions to which the county courts in accordance with the statutes have committed dependent children. Both Catholics and non-Catholics are sent to the schools; and while all the children are taught the Catholic catechism, only the Catholic children are required to attend the regular Catholic religious services. It was alleged that these appropriations were in violation of the clause of the state constitution forbidding the appropriation of public funds in the aid of sectarian institutions. The court decided that since the amount of money paid by the county to the schools in question for the support of each child was less than the actual cost of maintaining that child at a state institution the appropriations could not be said to be in aid of the sectarian school. The court seems to have been influenced in part by the fact that there were available no other suitable institutions to which these dependent children could be sent and that such schools could be erected and maintained by the county or state only at great expense. The case seems to be in conflict with the earlier Illinois case of County of Cook v. Industrial School for Girls (125 Ill. 540; 18 N. E. 183).

Compulsory Taking of Private Property for Use in Work on Public Roads. Galoway v. State (Tennessee, March 23, 1918, 202 S. W. 76). This case holds that persons who have wagons and teams may be compelled by law to allow their use by the county for work upon the roads for a specified number of days each year. Such compulsory use of property is justified upon the same principle as that which underlies the time-honored custom of compelling the citizen to give his labor directly for the same purpose. Laws which make service upon the roads compulsory have frequently required the citizens to provide

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the tools with which to do that work. The law in question is a less drastic exercise of governmental authority than such a law. The long line of cases sustaining the compulsory service acts and culminating with the decision of the United States Supreme Court in the case of Butler v. Perry (240 U. S. 328; 36 Sup. Ct. 258) are, therefore, authorities in support of the statute involved in this case. The property thus taken for use on the roads cannot be said to be taken by the taxing power, nor by the power of eminent domain, but by the police power of the state. That portion of the act, however, which compelled the owners of the teams so commandeered to feed them while they were being so used was held void as a taking of private property for public use without just compensation. The taking of the feed was distinguished from the taking of the horses on the ground that the latter taking was merely temporary and in the nature of a loan which would not work severe hardship, while the feed thus provided was entirely appropriated by the public authorities.

Congressional Districts—Power of Legislature to Reapportion Frequently. People v. Voorhis (New York, February 15, 1918, 119 N. E. 106). In this case the New York court of appeals lays down the interesting rule that when the legislature of a state reapportions the congressional districts of that state after a decennial census it does not thereby exhaust its power or completely discharge its duty. It is under a continuing obligation to keep on redistricting the state as often as the shifting of population may make it necessary or advisable. The state of New York was redistricted in 1911. In 1916 a congressman was elected to represent the seventh district and he resigned in January, 1918. In June, 1917, the legislature redistricted the state, altering the boundaries of the seventh district in the process. The governor issued a call for a special election to fill the vacant seat. Should the election be held in the seventh district as constituted by the apportionment of 1911 or in the new seventh district created by the act of 1917? The court upheld the validity of the last apportionment and declared that the seventh district marked out by the statute of 1911 no longer existed. It was pointed out that when Congress in 1911 called upon the states to create new congressional districts based upon the census of 1910 it used the words "the representatives to the Sixty-Third and each subsequent Congress shall be elected by districts composed of a contiguous and compact territory, and containing as nearly as practicable, an equal number of inhabitants." This shows clearly

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that "Congress in its enactment took into consideration the fact that after a state had once been divided into congressional districts, by reason of shifting population, it might become necessary to redistrict it in order fully to comply with the intent and purpose of the act."

The position of the majority of the court was vigorously attacked in two dissenting opinions. It was pointed out that ever since 1842, when Congress first directed the creation of congressional districts based upon the federal census, state legislatures have assumed that such districts were to be changed only when a new census had been taken. This, it was urged, was the clear intention of Congress. To hold that congressional districts must be continuously reshaped to conform to the rapid shifting of population would make necessary the frequent enumeration of the population of the state in order to determine the amount and character of such shifting. It was not the purpose of Congress to lay upon the states any such obligation to take frequent censuses. It was further urged that even if such frequent reapportionments were legitimate they could be made to apply only to the regular elections held after their enactment. Otherwise a man might be elected to Congress only to find himself representing a "migratory" district, or perhaps a district which, by some act of redistribution, had ceased entirely to exist. Such a result is clearly contrary to the intention of Congress.

If the New York court of appeals has correctly interpreted the congressional act governing the decennial reapportionment of congressional districts it would seem highly important that that law be modified to prevent the enormous increase of gerrymandering which the rule in this case would make possible.

Criminal Law—Criminal Syndicalism—Advocacy of Sabotage. State v. Moilen (Minnesota, April 19, 1918, 167 N. W. 345). This case involved the question of the constitutionality of the Minnesota statute of 1917 defining and punishing the crime of "criminal syndicalism." Criminal syndicalism was declared to be the doctrine "which advocates crime, sabotage (this word as used in this bill meaning the malicious damage or injury to the property of an employer by an employee), violence or other unlawful methods of terrorism as a means of accomplishing industrial or political ends." Teaching this doctrine by spoken or written words or attending, instigating or aiding meetings for the purpose of advocating it was made a felony with a maximum penalty of ten years imprisonment, five thousand dollars fine, or both.

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The statute was held by the state supreme court to be constitutional. It did not abridge the privileges or immunities of citizens of the United States, since there could be no constitutional right to advocate a doctrine so menacing. It was not a denial of the equal protection of the law in penalizing methods of carrying on industrial struggles alone because it is well established that the problems of labor may properly be treated by special laws without creating arbitrary classifications. Finally, the penalties provided for do not exceed the limits of legislative discretion so as to constitute cruel and unusual punishments.

Elections—Bribery at Presidential Elections. United States v. Bathgate (U. S. Supreme Court, March 4, 1918, 38 Sup. Ct. 269). A conspiracy to bribe voters at a general election at which presidential electors and members of Congress are to be chosen is not punishable under any statute now on the statute books of the United States. It is not a conspiracy to "defraud the United States" as defined by section 19 of the Criminal Code, nor is it a conspiracy to prevent or hinder the free exercise of any right or privilege secured by the Constitution or laws of the United States as defined in section 37 of the same code. This case does not in any way involve the question of the power of Congress to enact a statute which would effectively punish such bribery. The fact is that Congress has not done so. A review of the history of the two sections of the Criminal Code under which it was attempted to bring these indictments indicates that they were not intended to apply to bribery in elections. There are no common law crimes against the United States, and the United States can punish a man only when it has been able to show that he has committed an offense which falls clearly within the provisions of an act of Congress.

Elections—Right of Convict to be Candidate in State Primary. State v. Schmahl (Minnesota, May 17, 1918, 167 N. W. 481). An injunction was asked for to restrain the secretary of state from placing upon the primary election ballot the name of a man who, since filing his affidavit as a candidate, had been convicted of felony in a U. S. court and who was, therefore, disqualified from holding any office under the constitution of the state. The court refused to give the relief sought. The office of United States senator is a federal office and the qualifications for holding it are fixed by the federal Constitution. The fact that United States senators are elected by the state election machinery does not make applicable to the candidates for that office the restrictions upon the right to hold office found in the constitution of the state.

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Governor—Power to Issue General Amnesty and Remit Civil Penalties. Hutton v. McClesky (Arkansas, February 11, 1918, 200 S. W. 1032). In January, 1918, the governor of Arkansas issued a proclamation reducing to the sum of one dollar all penalties against delinquent taxpayers for the year 1917. The supreme court held that in so doing the governor overstepped his constitutional power. This was true for two reasons. In the first place, the power of the governor to pardon applies only to criminal cases and does not extend to the remission of penalties which are civil, remedial, or coercive in character. This clearly follows from the fact that the clause of the constitution defining the power of pardon stipulates that it be used "in all criminal and penal cases . . . after conviction." Only those may be pardoned by the governor who have been duly convicted by a court of law. In the second place, the proclamation was in excess of the governor's power because it amounted to a general amnesty. The constitutional provision already quoted indicates an intention to have the pardoning power used only in the case of individually convicted criminals and not for purposes of general amnesty; and the same intent is apparent in a further clause of the constitution providing that "no power of suspending or setting aside the law or laws of the state shall ever be exercised except by the General Assembly."

Minimum Wage—Constitutionality. Larsen v. Rice (Washington, April 3, 1918, 171 Pac. 1037). This is the fourth in an unbroken line of favorable state supreme court decisions upon the constitutionality of minimum wage laws applicable to women and children. These laws have all been substantially the same. The Washington statute of 1913 created an industrial welfare commission which had power to investigate the conditions in any industry in which women and minors were employed and to issue a mandatory order regulating those conditions and fixing a minimum wage. In upholding this law the state supreme court merely cited with approval the opinion of the supreme court of Oregon in the case of Stetler v. O'Hara (69 Ore. 519; 139 Pac. 743) without reviewing the arguments contained in that opinion.

Mothers' Pensions—Constitutionality. Rumsey v. Saline County (Nebraska, March 16, 1918, 167 N. W. 66). The case upholds the validity of the Nebraska mothers' pension act of 1915. Three objections were urged against the constitutionality of the statute: first, that it contained more than one subject; second, that, as an amendment to

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the poor laws of the state, it should have repealed entirely the section which it was intended to amend; third, that it would necessitate an overstepping of the county tax limit set by the constitution. The court found no virtue in any of these contentions.

Naturalization—Grounds upon Which Certificates May be Canceled. United States v. Kamm (U. S. District Court, January 3, 1918, 247 Fed. 968). The defendants in this case had made their final application for naturalization before the date of the declaration of a state of war with Germany, but the statutory period of ninety days which must elapse between the application and the granting of final papers had not expired until after that date. The United States district court in which they had filed their petitions took the view, however, that the naturalization statute permitted their naturalization provided the applications were made before they became alien enemies. They were accordingly naturalized. The naturalization law provides that a United States district attorney may bring suit in any district in which a naturalized person resides to cancel his certificate of citizenship on the ground of fraud or on the ground that it was "illegally procured." Such an action to cancel the naturalization certificates of the defendants was brought on the ground that they were "illegally procured," inasmuch as the court which issued them had misinterpreted the statute and had issued the certificate when it had no authority to do so by reason of the fact that the defendants were alien enemies at the time of receiving their final papers. The question raised may be stated thus: Has one district court the power to cancel as being "illegally issued" the naturalization papers issued by another district court because the second court disagrees with the first upon the interpretation of the naturalization laws? The district court in this case holds that it does have this power. The decisions of the United States Supreme Court indicate that the words "illegally procured" are not to be construed in a narrow sense, but should be made to cover any irregularity or illegality which is apparent to the court regardless of the good motives of any or all of the parties involved.

Police Power—Sterilization of Defectives. Haynes v. Lapeer Circuit Judge (Michigan, March 28, 1918, 166 N. W. 938); In re Thomson (Supreme Court, Albany County, N. Y., March 5, 1918, 169 N. Y. Supp. 638). A Michigan statute of 1913 provided for the sterilization of persons confined in state institutions who had been adjudged mentally defective

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or insane by a court of competent jurisdiction. There were adequate procedural requirements to prevent abuse of the power granted, and the operations were to be performed upon the approval of two qualified physicians. This act was held invalid on the ground that it violated the protection against the denial of the equal protection of the law, inasmuch as it applied only to such defectives as were confined in state institutions. Even the attorney general filed a brief attacking the law upon this ground. The court did not indicate what its attitude would have been toward a law providing for the sterilization of criminals and defectives which did not involve an arbitrary classification. In the case of In re Thomson practically the same issue was raised. The New York statute of 1912 was somewhat broader in scope than the Michigan act, but it also applied only to criminals and defectives in state institutions. The court regarded this classification as arbitrary and therefore a denial of due process of law. It furthermore regarded the whole scheme of the law as arbitrary and unjustifiable in character and a violation of due process of law. It reviewed with obvious approval the testimony of several physicians and scientists who for various reasons disapproved of the policy of sterilization of defectives and concluded that the proposed operation "is not justified either upon the facts as they today exist or in the hope of benefits to come." The court did not regard the law as a proper exercise of the police power.

Taxation—Public Purpose—Validity of Seed Grain Law.—State v. Wienrich (Montana, February 1, 1918, 170 Pac. 942). A suit for injunction was brought to restrain the holding of a county election to pass upon the issuance of $300,000 worth of bonds to be loaned to needy farmers in accordance with the provisions of the Montana seed grain law of 1915. Inasmuch as the amount of this proposed bond issue was in excess of the limit set by law the injunction was granted. The state supreme court took the opportunity, however, to examine carefully the question of the constitutionality of the seed grain law in its broader aspects. While, strictly speaking, the discussion of these constitutional questions may be regarded as *obiter dicta*, it seems clear that it was intended by the court to be an authoritative pronouncement upon those questions. The law was held to be constitutional. The statute provided for the loaning of money to "needy farmers who are unable to procure seed," and made such loans a lien upon the crops and land of the farmers who received them. This does not involve an exercise of the taxing power for a nonpublic purpose. The constitution

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of the state permits the counties to provide for "those inhabitants, who, by reason of age, infirmity or other misfortune, may have claims upon the sympathy and aid of society." This is broad enough to include farmers who, by reason of the failure of their crops, are brought to the edge of ruin and who without help will become charges upon public charity. Loans of public money to such persons are for a public purpose. The conflicting view expressed by the supreme court of Kansas in 1875 (State v. Osawkee Township, 14 Kan. 418; 19 Am. Rep. 99) merely "shows how even mighty minds are circumscribed by the spirit of their time." The statute in the present case confined the benefits of the act to those needy farmers who were resident freeholders, and thereby raised the question of arbitrary discrimination against homesteaders and renters. On the theory that the court should so construe a law as to validate it if that can be done without violence to its language, the court held that both the tenant farmer and the homesteader could take advantage of the provisions of the law, such an interpretation being in harmony with its general purpose. This case is in harmony with decisions handed down by the supreme courts of North Dakota and Minnesota. See State v. Nelson County (1 N. D. 88; 45 N. W. 33) and Deering and Co. v. Peterson (75 Minn. 118; 77 N. W. 568).

War Problems. *Alien Enemies—Nonresident—License Under Trading With the Enemy Act.* Hungarian General Credit Bank v. Titus (New York, Appellate Division, April 5, 1918, 169 N. Y. Supp. 926). The plaintiff was a Hungarian corporation. It held the defendant's promissory note for $5000. In accordance with the provisions of the Trading With the Enemy Act the attorney for the plaintiff corporation applied to the alien property custodian and secured from him a license permitting the prosecution of an action to collect the note. It is here held that there is no authority in the statute for the issuance of such a license. The act provides that under certain conditions the President may authorize the licensing of nonresident alien enemies to carry on business in this country, and that such licensees may sue in any cause of action arising out of the business they are licensed to carry on. The plaintiff had no such license to do business in the United States and could not, therefore, be given a license to sue in the courts of this country. The action was accordingly stayed until the close of the war.

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Alien Enemies Resident in United States—Right to Sue—Trading With the Enemy Act. Tortoriello v. Seghorn (New Jersey, Chancery, March 12, 1918, 103 Atl. 393); Krachanake v. Acme Mfg. Co. (North Carolina, April 24, 1918, 95 S. E. 851); Arndt-Ober v. Metropolitan Opera Company (New York, Supreme Court, 169 N. Y. Supp. 304; also New York, Appellate Division, April 5, 1918, 169 N. Y. Supp. 944). These three cases all involve the question of the rights and privileges of resident alien enemies under the Trading With the Enemy Act. In the New Jersey case an unnaturalized German had entered into a contract to sell real estate before the passage of the act. He resisted an action brought for a writ of specific performance to compel him to sell in accordance with the terms of his contract, on the ground that he was forbidden to engage in such a transaction by the provisions of the law. The other two cases involve the right of resident alien enemies to institute suits in the courts of this country. In each case it was pointed out by the court that the Trading With the Enemy Act makes the test of enemy character residence and not nationality and that the only enemy aliens living in this country who are to be regarded as enemies within the meaning of the statute are those that have been interned for the period of the war. Accordingly a German citizen living in New Jersey could be compelled to carry out his contract, and other enemy aliens resident here have the same right of access to the courts that American citizens have.

Articles of War—Scope—Persons Accompanying the Armies of the United States. Ex parte Gerlach (U. S. District Court—December 10, 1918, 247 Fed. 616). Gerlach was employed by the United States shipping board and was sent by them to Europe. He was there discharged and sent back on an army transport. On the return voyage he volunteered to stand watch but finally, as the ship was passing through the danger zone, refused to do so. He was thereupon court-martialed and sentenced to five years imprisonment for disobedience of orders. He appealed from this conviction on the ground that he was not subject to the jursdiction of a military court. The Articles of War, as amended August 29, 1916, make subject to military jurisdiction "All retainers and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States, etc." The court decided that the Articles of War applied not only on land, but in any place where military operations

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were being conducted. Gerlach was a person accompanying the armies of the United States and voluntarily serving in connection with them. He was accordingly amenable to military discipline. Furthermore, the captain of the vessel had the right, apart from the authority bestowed by the Articles of War, to compel all on board to help protect the ship from imminent peril. The court-martial accordingly had exclusive jurisdiction in this case.

Conscription Act—Constitutionality—Stare Decisis. Cox v. Wood (U. S. Supreme Court, May 6, 1918, 38 Sup. Ct. 421). The appellant in this case claimed that the Selective Draft Law is unconstitutional because its avowed purpose is to compel men to serve in the army which is to be sent out of the country. It was argued that while Congress could draft men into the national militia it could use the militia thus organized only "to execute the laws of the Union, suppress insurrections and repel invasions." This precise point had not been considered by the court in its opinion in the Selective Draft Cases (245 U. S. 366; 38 Sup. Ct. 159) upholding the constitutionality of the conscription act. The opinion in this case, however, states that the earlier decision had rested upon grounds broad enough to meet this argument. The right of Congress to create a conscript army rests upon the constitutional authority which it enjoys to declare war and raise armies, and this broad authority is not hedged in by any "limit deduced from a separate and for the purpose of the war power wholly incidental if not irrevelant and subordinate provision concerning the militia found in the constitution."

The court was requested by the counsel for the government to strike from the files the brief presented by the appellant's counsel, Mr. Hannis Taylor, on the ground that it contained passages which were "scandalous and impertinent." The court agreed that the passages "justify the terms of censure by which they are characterized in the suggestion made by the government," but refused to grant the motion to strike on the ground that "the passages on their face are so obviously intemperate and so patently unwarranted that, if as a result of permitting the passages to remain on the files they should come under future observation, they would but serve to indicate to what intemperance of statement an absence of self-restraint or forgetfulness of decorum will lead, and therefore admonish the duty to be sedulous to obey and respect the limitations which an adhesion to them must exact."

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Conscription Act—Desertion—Persons Subject to Military Law. Franke v. Murray (U. S. Circuit Court of Appeals, February 14, 1918, 248 Fed. 865). A conscientious objector on religious grounds, whose claim for exemption was denied and who was ordered to report for transportation to training camp, refused to do so and was arrested and tried by a court-martial for the crime of desertion. He alleged that he was not a deserter since he had never joined the army, that he was merely subject to civil prosecution for whatever offense he may have committed, and that the conscription act was invalid because it delegated legislative power to the President. The court found no virtue in these arguments. The Selective Draft Act clearly makes a man subject to military law from the time he is drafted, certainly from the time he is accepted for service and receives notice to report. Failure thus to report makes him a deserter therefore. The rules regarding voluntary enlistment do not apply, and a man is a member of the national army even before he takes an oath at the time of actual induction. The conscription act, furthermore, specifically exempts from the jurisdiction of the civil courts those persons which are made subject to military law. The contention that the law is void because it delegated legislative power to the President has been effectively disposed of by the decision of the Supreme Court in the Selective Draft Cases (245 U. S. 366; 38 Sup. Ct. 159).

Conscription Act—Who Are Declarant Aliens Within Its Terms. United States v. Mitchell (U. S. District Court, February 27, 1918, 248 Fed. 997); Gazzola v. Commanding Officer of Ft. Totten (U. S. District Court, March 6, 1918, 248 Fed. 1001); United States ex rel. Warm v. Bell (U. S. District Court, February 27, 1918, 248 Fed. 1002); Halpern v. Commanding Officer at Camp Upton (U. S. District Court, February 27, 1918, 248 Fed. 1003); United States ex rel. Pfefer v. Bell (U. S. District Court, February 19, 1918, 248 Fed. 992). The conscription act provides for the exemption from compulsory military service of aliens, but makes liable to such service aliens who have declared their intention to become naturalized and who have taken out their first papers. In the Mitchell case a Russian citizen who had taken out his first papers had allowed a period of more than seven years to elapse, so that at the time he was drafted he had lost his right to become naturalized. It was held that he was still a declarant and therefore subject to draft. The fact that his first papers had lapsed did not create any presumption that he had resumed his old allegiance to a foreign

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country, and as long as he remained in this country he retained the status of a declarant. Gazzola was an Italian who took out first papers in 1909 but was refused final papers because of his conviction for the illegal sale of liquor. The court decided that he was still a declarant and liable to draft, inasmuch as he was not precluded from reapplying for citizenship at some future time. Warm and Halpern were both Austrians who had taken out their first papers at the time they were drafted. It was held that they could not subsequently be released by the courts on the ground that after their induction into the army they had become alien enemies by reason of the declaration of war on Austria. Their induction was entirely lawful at the time it occurred, and the conscription act provides no method of discharging alien enemies from the ranks by any judicial process. In the Pfefer case, after considering some of the familiar arguments against the validity of the draft act and answering them in the usual way, the court considered the contention that the statute was void because it violated certain provisions in the treaties between the United States and foreign nations, in this case Russia, and the further argument that it violated rules of international law by which Congress is bound. The court replied by saying that any treaty could be overriden and repealed by a subsequent act of Congress, and that "the rules of international law, like those of existing treaties or conventions, are subject to the express acts of Congress, and the courts of the United States have not the power to declare a law unconstitutional, if it be within the authority given to congress as to legislation, even though the law itself be in contravention of the so-called law of nations."

Courts-Martial—Review of Decisions by Civil Courts. People v. Stotesbury (New York, Sup. Ct. App. Div., April 5, 1918, 169 N. Y. Supp. 998). An officer in the New York National Guard was convicted by court-martial of disobedience of orders and neglect of duty. This conviction was reversed by the appellate division of the supreme court, after a review of the evidence in the case, because the court "discovers no evidence whatever of either refusal or neglect, and therefore considers itself competent and enabled to review and to reverse the findings of the court-martial."

Espionage Act—Disloyal Utterances as Violation of. U. S. v. Hall (U. S. District Court, January 27, 1918, 248 Fed. 150). The defendant in this case was charged with a violation of the Espionage Act of June

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15, 1917. He had made slanderous remarks about the President, impugned the motives of this country in entering the war, and expressed the hope that Germany would win. The court decided that he had not violated any of the provisions of the Espionage Act. He had not circulated false reports because the things he had said were expressions of opinion and not statements of fact. He had not tried to cause insubordination in the military and naval forces of the United States, because no specific intention to produce such a result could be shown, and because there were no armed forces within reach to be influenced by his remarks. "It is as if A shot with a .22 pistol with intent to kill B two or three miles away." Finally there was no willful obstructing of recruiting or enlistment, because it could not be shown that the defendant's utterances had actually influenced anyone against enlisting. The court expresses its conviction that "the more or less public impression that for any slanderous or disloyal remark the utterer can be prosecuted by the United States is a mistake." The defendant could doubtless have been convicted had the amended Espionage Act of May, 1918, been in force at the time the remarks complained of were uttered.

Internment—Liability of Declarant Alien. Ex parte Graber (U. S. District Court, January 15, 1918, 247 Fed. 882). A citizen of an enemy country, who has taken out his first papers but has never completed his naturalization, is subject to internment for the period of the war if the government decides that the public safety demands it. Such a person has not renounced his allegiance to a foreign country, but has merely declared his intention of doing so at a future time. He has not yet ceased to be an alien and the outbreak of war has made him an enemy alien. The President acting through properly constituted authorities is the final judge as to the necessity of detaining any enemy alien. The courts will not review his action.

Vice—Power to Suppress Near Military Posts—Constitutionality. United States v. Casey (U. S. District Court, January 11, 1918, 247 Fed. 362); United States v. Scott (U. S. District Court, February 28, 1918, 248 Fed. 361). The defendants in these two cases denied the constitutional authority of the secretary of war to issue a proclamation in pursuance of section 13 of the Selective Service Act making it a penal offense to establish or maintain a house of prostitution within five miles of any military post or station. It was alleged that this was

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an unconstitutional invasion of the police power of the states. In each case the court sustained the validity of the statutory provision and the proclamation. These restrictions were not imposed as an exercise of police power but as an exercise of the war power of Congress. The power to raise and equip an army carries with it by implication the power to protect the morals of the soldiers composing it. Nor was there any unconstitutional delegation of legislative power to the secretary of war. He did not make the law nor decide what its policy and scope was to be. He merely gave effect through an administrative regulation to the law which was already complete when it left the hands of Congress.

War—Incomplete State of—Criminal Liability of Mexican Soldiers for Killing American Soldiers. Arce v. State (Texas, Court of Criminal Appeals, April 17, 1918, 202 S. W. 951). The four defendants in this case were soldiers under the military authority of the Carranza government in Mexico. As such they participated in an attack upon United States troops at San Ygnacia and were captured. They were tried for the murder of the American soldiers whose lives were lost in the encounter and were convicted and sentenced to be executed. This decision reverses the conviction. The court recognized that at the time of the fighting, a state of war existed between the United States and Mexico, even though it might be regarded as an inchoate and incomplete state of war. This being true the Mexican soldiers engaged in such war were amenable to the rules of international law, or perhaps to our national law, for acts committed in this country, but not to the law of the state of Texas. If they were guilty of crime they should have been tried in the federal courts. But even if the state had jurisdiction in this case the conviction of the defendants must be reversed because in their conduct they had been subject to the authority of their superior officers, so that no criminal liability could attach to their acts done in pursuance of the orders of those officers.

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NEWS AND NOTES

EDITED BY FREDERIC A. OGG

University of Wisconsin

The American Historical Association will meet in Cleveland next December at about the same time as the American Political Science Association and the American Economic Association. Professor W. F. Willoughby, director of the Institute for Government Research at Washington, has been appointed chairman of the American Political Science Association's committee on program.

Dr. Edward S. Corwin has been appointed to the McCormick professorship of jurisprudence at Princeton University in succession to Professor W. F. Willoughby, who has severed his connection with the university in order to devote his time exclusively to the Institute for Government Research. The McCormick professorship is the chair formerly held by President Wilson.

Dr. Lindsay Rogers, adjunct professor of political science in the University of Virginia, has been made an associate professor. Mr. Tipton Ray Snavely, of Harvard University, has been made instructor in economics and political science, and will take over the work of Professor Thomas Walker Page, who has leave of absence to serve on the Federal Tariff Commission. Mr. S. J. Hart has been appointed instructor in political science. During Professor Page's absence, Professor Rogers will have charge of the department.

Professor Raymond G. Gettell, of Amherst College, is engaged in administrative work for the priorities division of the Shipping Board at Washington.

Mr. Rinehart J. Swenson, who received the doctor's degree at the University of Wisconsin in June, has been appointed instructor in political science at New York University.

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Dr. Charles G. Fenwick, associate professor of political science at Bryn Mawr College, has been advanced to a full professorship.

Miss Marjorie L. Franklin, instructor in political science at Vassar College, has accepted an instructorship at Bryn Mawr College for the coming year.

Professor J. M. Mathews, of the University of Illinois, has been engaged by the Consolidation and Efficiency Commission of Oregon to make an investigation of the administrative departments of government in that state.

Professor Edgar Dawson, of Hunter College, gave courses in political science at Columbia University during the summer session.

Professor Herman G. James, of the School of Government of the University of Texas, director of the Bureau of Municipal Research and Reference, has received leave of absence to accept a position with the War Camp Community Service for the duration of the war.

Mr. Frank M. Stewart, instructor in the School of Government of the University of Texas, and Mr. William C. O'Donnell, assistant in the Bureau of Municipal Research and Reference, are on leave of absence. Both hold commissions in the army.

Mr. Edward T. Paxton, secretary of the Bureau of Municipal Research and Reference at the University of Texas, has accepted a position with the Philadelphia Bureau of Municipal Research. Mr. Albert A. Long will be in charge of the Texas bureau during the coming year.

Professor E. R. Cockrell, of Texas Christian University, gave courses in government in the summer session of the University of Texas.

Professor Ellery C. Stowell has resigned from the faculty of political science of Columbia University.

Professor John A. Fairlie, of the University of Illinois, managing editor of the REVIEW, is attached to the Quartermaster General's Office at Washington.

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Dr. William Starr Myers has been advanced to a full professorship of politics at Princeton.

The Beecher lectures at Amherst College were given during the past year by Dr. Harold J. Laski, of Harvard University. They dealt with the general subject of the theory of the state.

During the spring months a series of public lectures intended for advanced students in law and political science was delivered at the College of the City of New York under the auspices of the New York bar associations. Among the lectures dealing with public law were the following: "New Phases of Public Utilities Regulation," by Judge William L. Ransom; "Due Process of Law, its Modern Development," by Judge Charles M. Hough; "Treaties as Sources of International Law," by Arthur K. Kuhn; "Municipal Taxation or Local Taxation," by Curtis A. Peters; and "Evolution of Alsace-Lorraine," by Maurice Leon.

The first annual meeting of the Ohio Academy of Social Sciences was held at Columbus on March 29 and 30. The general theme of the sessions was economic, political, and social reconstruction following the war, with special reference to the situation in Ohio. Subjects covered most fully were the organization of the labor market; the status of women as affected by the war; possible new sources of revenue; effect of the war on political thought, organization, and action; and teaching of political and social science in the public schools. The academy elected as its president Professor A. R. Hatton, of Western Reserve University.

The Baldwin prize, offered through the National Municipal League, has been awarded for 1918 to Mr. Harris Berlack, a sophomore at Harvard University, with honorable mention of the essay submitted by Mr. Maurice H. Merrill, a junior at the University of Oklahoma.

It has been announced that there will shortly be established in New York City an independent College of Political Science, designed to afford facilities for advanced study of political and social subjects, with a minimum of routine instruction and of administrative machinery. An endowment fund of $150,000 a year for ten years has been largely secured. A brief discussion of the plan will be found in the *Nation*, May 11, 1918.

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The annual meeting of the National Municipal League was held June 5–6 in New York City in conjunction with the National Conference on War Time Economy called by the Academy of Political Science and the New York Bureau of Municipal Research. The Association of State Leagues of Municipalities, the Governmental Research Conference, and the Association of City Managers were in session at the same time and place. The subjects taken up at the sessions of the National Conference on War Time Economy were executive leadership in democracy, war economy in financing local improvements, the government as an employer, the new era in budgets, and new duties of city and state governments in war times. The principal papers included: "The Recent Growth of Executive Leadership," by Dr. Frederick A. Cleveland; "The Pay-As-You-Go Policy in New York City," by Comptroller Charles L. Craig; "Regulation of Capital Issues for Local Improvements and Maturing State and Municipal Debts," by Paul M. Warburg; "A War Chest for Public Improvements," by Mayor A. J. Peters of Boston; "First Steps toward a Budget System," by W. F. Willoughby, of the Institute for Government Research; "Budget Reorganization in Illinois," by Governor Frank O. Lowden; and "The First State Executive Budget," by Governor E. C. Harrington of Maryland.

A Program of Responsible Democracy.[1] When a program of political reform is offered, an illimitable field is open for discussion. The character of the proposals, the nature of the principles they embody, their accordance with the spirit of the Constitution, their suitability to American conditions, their harmony with American ideals, their acceptability to popular sentiment, their relative importance in comparison with other reform projects, are all matters that admit wide range of treatment and furnish occasion for endless consideration; for the subject is really inexhaustible in its connections.

In addition to this inherent difficulty a program of reform suffers from the special disadvantage that experience has shown that reforms never fulfill the expectations with which they are introduced. We have already had much reform; have the results been satisfactory? At the 1907 meeting of this association a program of reform was discussed under the title, "The Newer Institutional Forms of Democracy,"

[1] A paper read at the annual meeting of the American Political Science Association at Philadelphia, December 28, 1917.

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by which were designated such reforms as the direct primary, the initiative, referendum, and recall. In the decade that has elapsed since that discussion those reforms have been extensively introduced. As a matter of fact, has any one of them accomplished what was expected? Is it not a question whether the actual consequence has not been to make practical politics more confused, irresponsible, and costly than before? The August (1917) number of the AMERICAN POLITICAL SCIENCE REVIEW contains an analysis of the working of the direct primary in New York State, which is exhibited as proof that "the political powers can easily nominate their candidate, although their actual following may be a small percentage of the actual party membership." But the ground on which the direct primary was urged for adoption was that it would transfer power from the professional politicians to the people; so it appears that the practical result has been exactly the reverse of what was intended. It seems to me that the actual situation with respect to all the items of the program of reform considered by this association ten years ago is this: that the extent to which they are still approved is on the score of what ought to be and not what is. Faith in them is justified by the merit of their purpose, and failure in practice is excused on the ground that it is the fault of the people. Whether or not this is a sensible way of viewing the subject is not now to the point. Be the cause what it may, the fact is manifest that results have not fulfilled expectations.

Turning from our own experience to constitutional history in general, is it not the case that the only thing certain about any reform is that it will never work in the way that had been expected? I am not saying that the consequences need necessarily be bad; I admit that salutary reform may be instanced. My point is, and I think all history will verify it, that results always differ from what is anticipated. This characteristic fallibility of anticipation is further illustrated by the fact that great constitutional developments are apt to arrive unobserved, establishing themselves in practice before their nature is perceived. I suppose that everyone will admit that the most important political forms now extant are nationality and representative government. It is well-known that in neither case was the rise of the institution perceived by the generations that produced it.

If, then, reform is incalculable in its results, and constitutional development has the habit of taking people unawares, what is left for us to do? Where is there any field for the application of political science? The answer is that we can make our object improvement instead of

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reform; that instead of trying to create new conditions we can accept present conditions as the basis of endeavor and make the best of them by the historic agency of redress of grievances. The distinction may be illustrated by observing that a program of reform aims at cutting new channels for political force, while improvement seizes upon the existing channels and confines itself to the task of clearing them of snags and obstructions. Political science stands in relation to such a process simply in the capacity of engineering knowledge. As an incident of improvement great reform may take place, but with the important qualification that it will not be due to imposed requirement but to spontaneous development. History abounds with exemplifications of this tendency. It may be doubted whether salutary reform can be obtained in any other way.

If it should be the case that the course of our political development has raised definite issues of practical improvement, which have already attracted public attention, it is easy to see that there is tactical advantage in concentrating efforts upon them. While a program of reform opens endless discussion, particular demands require specific answers. If the demands are so urgent that they cannot be ignored, then the question at once comes up—if not, why not? This issue is joined and matters are put in shape for decision. Is it not the fact that our national politics, through their own gravitation, have produced issues of this character in two closely related subjects: (1) legislative procedure; (2) budget procedure? If such be the case, then I submit that it would be wise to discard reform and to address effort to the improvement of the conditions actually existing in those fields, not with the idea of making new channels of action, but of clearing and straightening the present channels.

Proceeding now to details, the fact is well-known that the policy of the administration is the master force that advances measures and brings them to determination. Well, then, let it be so; but is there not room for improvement? At present the process goes on in the dark. Conflicting and vague accounts reach the public of conferences with party leaders, of negotiations with committees, of caucus action, of concessions and adjustments to placard dissident factions, of delays, obstructions, exactions and demands which must be dealt with to obtain action. It is a dark, confused hubbub of activity, the particular elements of which can never be clearly discerned by the public, nor can the extent of their respective participation in what is done be computed. Moreover it appears that Congress itself is not much better

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situated for knowing just what is taking place. Enactments may contain features of which Congress was not aware in passing them, their presence being due to private opportunity supplied by the darkness in which bills take their final shape. Notorious instances of this occurred during the last session of Congress. Is not this darkness a genuine grievance that calls for redress? What improvement could be more natural and desirable than to bring the process out of darkness into light?

The specific demand for improvement in legislative procedure need therefore go no further than this: that the administration shall propose and explain all its measures—the bills and the budget—openly in Congress and fix the time when they shall be considered and put to vote. That is all, no more and no less. Aside from those particulars, the existing deposit of authority, both with the President and with Congress, will remain unimpaired. There will be no change whatever except this one change caused by making the administration do openly and publicly what it now does hiddenly and privately. Undoubtedly this one change will breed more change, but that will come spontaneously under the prompting of party convenience. Just what form the adjustments would eventually assume cannot be anticipated and speculation on this point is sheer futility. All that it is safe to say is that it will not be the parliamentary type of government as in England. The definite term and the independent authority of the presidential office is a solid circumstance that will condition all our constitutional development. The eventual type will probably differ from any existing type of government. It will be a distinctly American type, the product of our own needs and experiences.

The part which political science can take in such matters is quite subordinate and altogether accessory. The starting point of political improvement is not a theory, but a condition—the existence of a popular grievance demanding redress. But the mode of redress is a proper concern of political science. In this accessory relation, and there only, political science has an important function to discharge. Any real improvement has to overcome the resistance of interests attached to existing conditions. There are those who love darkness rather than light. Their tactics can give the members of this association plenty to do in correcting perversions of organic principles and misrepresentations of our constitutional history. For it is a fact that may be authenticated by political science, that this particular improvement in procedure would be a restoration rather than an innova-

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tion. This fact is obscured by the habit of taking the adoption of the instrument of 1787 as the beginning of our constitutional history, whereas the true beginning is the organization of the Continental Congress. The measures of 1781, by which executive departments were created to administer the public service and to act as advisors of congressional action, were prompted by considerations of the same character as those now inciting action. The close relation of these departments with Congress explains the peculiar and now superfluous clause of the Constitution which confers upon the President the right to require the written opinion of the principal officer in each of the executive departments upon any subject relating to his duties. Evidently the departments contemplated by the framers of the Constitution were such as then existed, whose habit was to work in conjunction with Congress.

The action taken at the first session of the new Congress, breaking off direct relations with the heads of departments, was a relapse to the behavior of the Continental Congress prior to 1781, producing the same kind of consequences. The actual system introduced by this relapse was incongruous with that feature of the Constitution which makes it the duty of the President to "give to the Congress information on the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." No public means now exists for the discharge of that duty, unless the theory be adopted that this signifies no more than that the President may request Congress to take the subject under consideration. Exactly that language was used in the French constitution of 1791, such being the intention of its framers. But our Constitution makes no such statement, nor has such an interpretation ever been successfully applied in practice. On the other hand, the Constitution says nothing as to the form in which the President shall present his measures or the means by which he shall get them before Congress and obtain its decision. The consequences of that defect are written large in our constitutional history. They are discussed judiciously in Story's *Commentaries*. They are impressively characterized in Senate Report No. 837, 46th Congress, 3d session, February 4, 1881, subscribed by leading statesmen of both the great national parties.

While political science may abundantly justify from our own history the propriety of introducing public means for the discharge of the presidential function of legislative initiative, it may also cite the experience of other nations. The Swiss constitution provides that the

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Federal Council—corresponding to our President and his Cabinet—"shall introduce bills or resolutions into the Federal Assembly;" that it shall "introduce the budget," and that its members "shall have the right to speak, but not to vote, in both houses of the Federal Assembly, and also the right to make motions on the subject under consideration."[2] It will scarcely be claimed that the character of Swiss government has suffered because of those provisions. In fact, the present reputation of Swiss government for economy and efficiency has been established since those provisions were adopted. There has been a strong disposition in this country to look to the experiences of Swiss democracy for instruction to American democracy; and wisely so if the study is thorough. Upon no point will consideration of Swiss experience be so salutary in its lessons as in this matter of open and direct relations between the executive and legislative branches.

But all this examination of possibilities of service by political science is contingent upon the assumption that demand for redress of grievances will take the direction that has been noted. There are unmistakable indications that it will. The issue of budget procedure has obtained an urgency that has drawn to it special thought and effort for some years past. In his message at the opening of the present session of Congress, President Wilson confronted that body with the need of improvement in budget procedure in terms that do not admit of further avoidance of that task. The improvement of legislative procedure is a cognate task quite as urgent in its foundations; and now the country is confronted with the need of making its constitutional system fit to cope with tremendous problems of subsistence and defense. Now that national legislation involves the management of every system of transportation and the direction of every important industry, now that it penetrates every home and reaches every income, defects that were formerly an occasional annoyance have become a constant peril. Is it supposable that in such a situation the people will put up with legislation by chance medley in the dark? No such combination of elements generating political force as now exists has ever occurred in all history without producing deep effects upon political structure. Either the times will mend existing institutions or else will make new institutions.

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[2] Swiss constitution, Articles 101 and 102.

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The British Representation of the People Act. On the evening of February 6, 1918, a measure which history may pronounce more momentous than any other passed by the British Parliament since the beginning of the present war was given the royal assent. It was not by choice that the ministry and the two houses turned their attention to electoral questions while the nation was yet fighting for its life within hearing of the Channel ports. Rather, they were compelled to do so by the sheer breakdown of the electoral system, caused by wholesale enlistments in the army and by the further dislocation of population incident to the development of war industries. The situation was bad enough in county, municipal, and parish elections. But a parliamentary election under the new conditions would have been a bald anomaly. By general consent the life of the Parliament chosen in December, 1910, has been prolonged, in order to defer, and perhaps to avoid altogether, a war-time election. A general election, however, there must eventually be; and whether before or after the cessation of hostilities, it would demand, in all justice, a radically altered system of registration and voting, if not new franchises and other important changes. Parliament acted wisely, therefore, in addressing itself to this great task, and in entrusting the preliminary consideration of a new electoral law to an extraordinary commission, chosen by the speaker of the house of commons and presided over by him, and constituted with much care to represent in proper proportion not only the parties and groups in Parliament but the various bodies of public opinion on electoral questions throughout the United Kingdom.

This "Speaker's Conference," consisting of thirty-six members from both houses, began its work October 10, 1916. Its report was presented to the house of commons in the following March, and on May 5 a bill based upon its recommendation was introduced as a government measure. Debate proceeded intermittently until December 7, when the bill, considerably enlarged, was passed and sent up to the house of lords. Here, seventeen days were devoted to the project, and on January 30, 1918, the measure was returned to the house of commons with eighty-seven pages of amendments. At least one of the proposed changes—that providing for proportional representation—was of a highly contentious nature; and, momentarily, the total failure of the bill, with the possibility of a constitutional crisis, loomed ominously. Happily, pressure of time made for compromise, and on February 6 the houses came into agreement upon a completed measure, which forthwith received the king's assent.

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The Representation of the People Act is primarily a piece of suffrage legislation. Yet it is a great deal more than that. Upon the basis of a doubled electorate it erects an electoral system which is almost entirely new; and the measure itself is to be thought of as a general electoral law, more comprehensive and far-reaching than any kindred act in English history. Its principal features may be summarized as follows:

1. Manhood suffrage—plural voting. Effort to adapt electoral machinery to the conditions entailed by the war early convinced the Speaker's Conference that the old practice of defining franchises in terms of relationship to property would have to be discontinued, and that in lieu thereof it would be necessary to adopt the principle that the suffrage is a personal right inherent in the individual. In pursuance of this revolutionary decision, the act swept away the entire mass of existing intricate parliamentary franchises and extended the suffrage to all male subjects of the British crown twenty-one years of age or over, and resident for six months in premises in a constituency, without regard to value or kind.

Liberal reformers have long urged the abolition of plural voting, and since 1905 several bills for that purpose have passed the house of commons. Many persons supposed that the principle of "one man, one vote" would now prevail. Events proved the contrary. In the first place, the university franchise, which has long been under fire and which the government electoral bill of 1912 proposed to abolish, was retained. Indeed it was considerably broadened, first by extending the right of separate representation to several of the younger provincial universities, and, second, by conferring the university franchise upon all persons who have obtained a degree of any kind, rather than, as at Oxford and Cambridge heretofore, merely upon recipients of the degree of M.A. In the second place, a man may acquire a vote in a constituency other than that in which he votes as a resident, by the occupation and use for business purposes of premises worth £10 or more a year. The Conservative elements insisted upon these arrangements as means of preventing the submerging of the more wealthy and more educated part of the electorate. But the Liberals triumphed in so far as to procure a stipulation that no person may vote at a general election in more than two constituencies.

2. Absent and proxy voting—soldiers and sailors. The main immediate purpose of the act is to bring back into the electorate the millions of men whose war service temporarily disfranchised them under

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the old system. Accordingly, full provision is made for the registration of soldiers and sailors as electors in their home constituencies. If within reasonable distance, the elector of this class may personally vote at a general election, receiving and returning his ballot-paper by post. If the distance be such as to involve too great delay, the elector may designate some person at home to act as his proxy and vote in his behalf. Furthermore, the voting age for all men who have rendered military or naval service in the present war is fixed at nineteen, rather than twenty-one. Provision is made, too, for absent-voting irrespective of war service, thus liberating from practical disfranchisement many thousands of merchant seamen, commercial travelers, fishermen, and other men whose occupations keep them away from their homes.

3. Woman suffrage. The withdrawal of the profusely amended government electoral bill of 1912 was a hard blow to woman suffrage, and the outbreak of the war in 1914 seemed to end all hope of early legislation on that subject. The effect of the war was, however, precisely the opposite of that expected. Within two years and a half the conflict brought the suffragists an advantage which no amount of agitation had ever won for them, i.e., the official support of the government, and a few months more carried their cause to a victorious conclusion which would hardly have been reached in a full decade of peace. There were two main reasons for this turn of events. One was the necessity which the war imposed of undertaking a wholesale revision of the electoral system, leading to the decision to base the franchise upon personal right rather than property relationship, and inevitably suggesting an equality in rights, as individuals, of women with men. But the fundamental reason brought forward by the war for enfranchising women was the great variety and value of women's services to the nation during the conflict. This was the thing that won over thousands of former opponents, from Mr. Asquith down. It soon became manifest that a majority of the conference and of both houses of Parliament stood ready to admit women to the franchise; only the method, the time, and the extent were seriously in dispute. On June 19 the house of commons adopted the proposals of the conference, somewhat amended, by a vote of 387 to 57. As finally passed, the act conferred the franchise upon every woman over thirty years of age who occupies a home, without regard to value, or any landed property of the annual value of £5, of which either she or her husband is the tenant. A woman may vote also for a university member if she is a graduate of a university that confers degrees on women, or if she has qualified for a degree in a university that does not admit women to degrees.

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The effect of the foregoing legislation is to double the British electorate at a stroke. The reform act of 1832 created half a million new electors, raising the proportion of electors to the total population to one in twenty-four; the act of 1867 created a million electors, raising the proportion to one in twelve; the act of 1884 added two million electors, making the proportion one in seven; the act of 1918 adds eight millions, bringing the proportion up to the remarkable figure of one in three. Of the eight million new voters, one-fourth are men and three-fourths women.

No strong objection was raised to the enfranchisement of the two million men. But the provisions of the act relating to women were vigorously opposed. All of the old anti-suffrage arguments—that woman's sphere is the home, that women do not want the ballot—were brought to bear; and it was especially urged that a measure of the present nature, whatever its intrinsic merits, ought not to be passed under the circumstances existing.

Still other objections were: (1) that six million inexperienced women voters ought not to be added to the electorate at precisely the time when the problems of war, peace, and reconstruction were to make unprecedented demands upon the electoral capacities of the country; (2) that, in the words of Mrs. Humphry Ward, the act would "cripple disastrously the indispensable conservative forces of the country at a time when there is the most imperative need of a due balance between conservative and liberal principles and influences;" (3) that the wholesale enfranchisement of women was dictated largely by the Labor party, which expects to turn the new stream of electoral power to its own advantage; and (4) that while the present measure is so drawn as to keep male voters in the majority, the age disparity between men and women will hardly outlast another parliament, and that when the inevitable equalization takes place women voters will be in a majority by upwards of two millions. In support of this last contention it may be added that the National Union of Woman Suffrage Societies has already officially announced its purpose to make the lowering of the female age limit its next achievement.

4. The local electorate. As the bill left the Speaker's Conference it somewhat absurdly gave the parliamentary franchise to six million women without in any degree extending the woman's local government electorate, which stood at about one and one-fourth millions. In the house of commons suffragists and anti-suffragists united to carry, without a division, an amendment conceding the municipal

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franchise to female parliamentary electors, in addition to the existing women rate-payers. To the new female electorate in local governments belongs, therefore, (1) every woman twenty-one years of age who for six months has occupied premises in her own right, and (2) every woman who is the wife of a man so occupying, provided she is thirty years of age.

5. Redistribution of seats—proportional representation. The redistribution act of 1885 made the parliamentary constituencies only approximately equal, and since that time inequalities have steadily grown. In its bill of 1912 the Asquith ministry made no provision for redistribution, saying that redistribution would be feasible only after the new franchise arrangements should have been fully determined. The act of 1918, however, brackets redistribution with franchise reform. It provides for one member for every 70,000 inhabitants in Great Britain, and one for every 43,000 in Ireland. It allots to the London boroughs 62 members (a gain of 3); to other boroughs, 258 members (a gain of 33, 44 old boroughs being abolished and 31 new ones created); to counties, 372 (5 less); and to universities 15 (6 more). The total membership of the house, formerly 670, thus becomes 707, apportioned by countries as follows: England, 492 (31 more); Wales, 36 (2 more); Scotland, 74 (2 more); Ireland, 105 (2 more). It will be observed that the disproportionate representation of Ireland is continued. But it is understood that the Irish quota is subject to change when the home rule question shall be finally settled.

The Speaker's Conference recommended that there be substituted for the single-member constituencies that have generally prevailed since 1885 a system of large constituencies returning several members under a plan of proportional representation. The house of commons rejected this proposal, in one form or another, three times before the bill went to the house of lords. The latter re-incorporated it, and during the closing stages of the debates the commons had occasion twice more to vote in disapproval of the innovation. The upper chamber proving inflexible, the bill was finally saved by a clause providing that commissioners should be appointed to prepare a plan for the election of one hundred members on the principle of proportional representation in town and country areas combined into constituencies returning from three to seven members; the plan not to take effect, however, until specially approved by both houses of Parliament. Proportional representation is applied outright to university constituencies returning two or more members. If it be thought strange that the conservative

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upper chamber should hold out so strongly for a novel, untried scheme, it must be remembered that the forces of conservatism felt that they were about to be inundated, and that proportional representation is conceived mainly in the interest of minorities. The Unionists in the house of commons seem to have been less apprehensive, for on five occasions they aided heavily in defeating the proposal.

6. Other electoral changes. The act revises the entire system of registration of voters. The register in each parliamentary borough and county is to be made up twice a year instead of but once, and responsibility for the work is placed upon the town clerks and clerks of the county councils. Registration has hitherto been a difficult and expensive process, but it is expected that, notwithstanding the doubling of the electorate, the simplification of the franchise will make the task far easier than before. Another change, and one that will give parliamentary elections an entirely new aspect, is the limitation of all polling at a given election to a single day. The former system, under which polling was drawn out through a period of approximately two weeks and returning officers exercised considerable discretion (sometimes with party ends in view) in fixing the polling dates in the various constituencies, lent itself peculiarly to plural voting, seriously interrupted business, and was otherwise open to objection. Limitation of plural voting removed the chief purpose of the old system.

The Corrupt and Illegal Practices Act of 1883 fixed, upon a sliding scale in proportion to the number of voters in the constituency, the maximum electoral expenditure of parliamentary candidates. It has been felt for some time that the amounts allowed were so large as to give an undue advantage to candidates of means. On this account, and for the further reason that the doubling of the electorate would have automatically increased the sums that might be legally expended, the new law sets up a new and reduced scale. In county constituencies the maximum expenditure (aside from a small agent's fee) is 7 pence per elector, and in borough constituencies 5 pence. The act, however, puts the returning officers' expenditures (for ballot-papers, clerk hire, printing, travel, etc.) upon the public funds, thus relieving the candidates of a considerable burden. Finally may be mentioned the novel requirement, intended to prevent an undue multiplicity of candidates, that every person offering himself for election to Parliament shall deposit £150, to be returned to him if he obtains more than one-eighth of the votes recorded, but otherwise to be forfeited.

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The Coalition Government at Ottawa. The session of the Canadian parliament which terminated on May 23, 1918, was the most remarkable in the history of the Dominion. There was at least one coalition government during the era of the united provinces of Ontario and Quebec—the era that extended from 1841 to 1867. But it was short-lived, and its only mission was to bring about confederation. With the exercise of tact by the premier and his cabinet, and with good management generally, a longer life may be secured for the coalition government that came into being at Ottawa in the autumn of 1917, and that was endorsed and returned to power at the general election in December of that year. The war and the conscription act of 1917 were the only issues at that election. In six or seven of the provinces there was a successful fusion of the old political parties—Conservative and Liberal—on these issues; with the result that when the new parliament assembled on the 18th of March, the Unionist government was able to command a majority of sixty in the house of commons—the only branch of parliament at Ottawa that really counts in the political life of the Dominion.

Fusion at the election of 1917, so far as the rank and file of the voters were concerned, was a matter of no great difficulty in most of the English-speaking provinces. The war has been the dominating factor in Canadian politics since the autumn of 1914; and for seventeen years before the war—from 1897 when the Liberal government adopted and greatly extended the national policy of the Conservatives—there were no continuing political issues on which it was possible, even with a microscope, to trace any dividing line between the Conservatives, who originated the policy of protection in 1870 and 1879, and the official Liberal party, which adopted it in 1897, which twice increased the tariff (1897 and 1907), and steadfastly adhered to a high protectionist policy from 1897 until it was defeated at the general election in 1911. From 1897 to 1914 only the offices and tradition divided the Liberals from the Conservatives; and in these years there was a decided decline in popular interest in politics, as compared with the period 1879–1896—the years during which the Liberals were in opposition.

Sir Robert Borden, premier of the Conservative government of 1911–1917, was the only man available for the premiership of the Unionist government formed in October. He is a good parliamentary figure; but quite lacks the strength and force of Macdonald, Thompson or Tupper—three of the Conservative premiers who preceded him. Sir Wilfrid Laurier, who was premier of the Liberal governments of

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1896–1911, and leader of the old Liberal opposition from 1911–1917, was not a possibility for the headship of the new government. He had lost much of his hold on the Liberals, especially of the grain growing provinces, by his sudden switching over to high protection in 1897, and by his adherence to protection of the type dictated by the Manufacturers' Association. Moreover, in 1917, the old Liberal party in the house of commons became divided on the conscription bill much as the Liberal party at Westminster was divided over Gladstone's home rule bill of 1886. Laurier went with the minority against conscription—a minority largely composed of Liberals from the province of Quebec; and his attitude towards the bill and the attitude of the French-Canadian Liberals made it impossible that Laurier, despite his long service as premier and his much longer service in the house of commons, could be acceptable as leader of the Unionist government.

Cabinet and ministerial places in the new government were, at its organization, almost equally divided between Conservatives and Liberals. A place was found in the cabinet for one representative of the grain growers; and there were included seven or eight men who had not hitherto been of the house of commons. Two or three of these ministers were altogether new to political life. The other newcomers to Ottawa were men who had seen some service in legislatures or in governments at the political capitals of the provinces. The new administration was consequently very much of a "Who's Who" body; and the first session of the new parliament disclosed no member of the cabinet as a man of outstanding political ability.

Neither for members on the treasury bench, nor for members supporting the Unionist government, nor for members of the opposition led by Laurier, did the session offer many parliamentary opportunities. Throughout there was a disposition, especially in the last four or five weeks, to hurry business in order that the premier and several of the ministers might leave for London at the end of May; and judging from the attendance in the public galleries and the space assigned to parliamentary reports in the daily newspapers, there was unusually little popular interest in the proceedings of the new house of commons.

It soon became obvious that the opposition had accepted the conscription act—that it had come to the conclusion that the act had been endorsed by the great majority of the electors at the general election, and was not to be assailed. It was equally noticeable that the opposition was not disposed to raise any question, or at all events not to push any question, in such a way as to bring about a closer union of

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the parties—Conservatives, Liberals and grain growers' representatives —that are supporting the government. Evidently the conviction of the Liberals in opposition is that the union as it has existed since October, 1917, is temporary. There would seem to be good grounds for this conviction; for as soon as the war comes to an end issues will be raised, especially in the grain-growing provinces, that threaten to divide the electorate quite as sharply as it was divided from 1879–1896—the years in which the Liberals were continuously and persistently assailing the protectionist policy of the Conservatives, and in national and other conventions pledging the party to sweep away the last vestige of the protectionist system to which the Conservatives, under the leadership of Macdonald, had committed the Dominion.

It is in the west—the country between the Great Lakes and the Rocky Mountains—that the campaigns for drastic economy, higher ethical standards in Dominion politics, and against protectionist tariffs, framed in the past by both political parties at the dictation of the manufacturers, will be launched at the end of the war. The grain growers are well organized. Much political achievement of a negative as well as of a positive character had accrued to their credit in the decade before the war. The farmers of Ontario are becoming almost equally well organized. They are associated with the grain growers of the western provinces in their political movement; and after the war the propaganda of the grain growers and the Ontario farmers is to be pushed in Quebec, and also in the Maritime Provinces. Both the grain growers and the Ontario farmers are well served by the weekly journals that are of the new agrarian movement; and the organized manufacturers who had matters pretty much their own way for seventeen years before 1914, are today more seriously concerned over the attack on the high tariff that is now threatening than they were over any attack between 1897 and the beginning of the war.

The legislation of the session of 1918 included an act conferring the electoral franchise on women, and an act making some sweeping changes in the organization of the civil service. A motion was also passed by the house of commons endorsing unanimously a minute of council in which the colonial office in Downing Street was informed that the cabinet and house of commons at Ottawa desired that the crown should confer no more hereditary distinctions, such as baronetcies and peerages, on Canadians domiciled in the Dominion. Canadians generally never appreciated the conferring of these distinctions on Canadians. They were not regarded as desirable links of empire. They

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were considered anti-social and antagonistic to the democratic conditions and traditions of the country. Recent bestowals of baronetcies and peerages on Canadians of great wealth—pushing, self-advertising men, of the bounder type—brought matters to a head; and the imperial government was faced with one of the most awkward colonial questions since Galt, in 1859, told the Duke of Newcastle that if as colonial secretary he counseled the cabinet to advise the queen to disallow the protectionist tariff enacted by the legislature of the united provinces in that year, the government in London had better send out troops to put the colony under military rule.

To students of political science, perhaps, the most noteworthy developments of the session and in the history of the Unionist government to the end of the session of 1918 arose out of the free use of orders in council by the government. By one of these orders, which had all the appearance of having been framed to help the Unionist government over a difficulty which was confronting them midway in the electoral campaign—by an audacious use of the power of order in council—a most important variation was made in the conscription act of 1917, a variation for which there would seem to have been no statutory warrant. Pressure for men for the military forces resulted in the cancellation of this order in council before the session was many weeks old; and when the constitutional history of Canada during the war comes to be written, the closest attention will have to be given to the free and in at least one instance extraordinary use to which the Unionist government put that most undemocratic instrument—the order in council. Then it will be expedient to ascertain why the order issued midway in the electoral campaign was deemed necessary; and also what action the Duke of Devonshire, the governor-general, took in regard to this particular order; for if the governor-general exercises any one function that is more constitutionally important than another, it is the function of seeing that there are no unwarranted departures from constitutional rules and usages—of seeing that the game is played strictly in accordance with the rules.

In any study of the working of representative institutions at Ottawa under war-time conditions, some attention will also have to be bestowed on a singular retrograde development that marked the 1918 session of the house of commons. For weeks there stood on the order paper a resolution, which, if the government had pressed it and it had been carried by the house, would have thrown upon the speaker the onerous and disturbing duty of censoring speeches made in the

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house before their publication in the parliamentary debates. There have accrued to the speakership at Ottawa most of the usages and traditions that since the middle years of the eighteenth century have attached to the great office of speaker of the house of commons at Westminster. As an office it approximates closely to the speakership of the house of commons of the imperial Parliament. At Westminster it is the usage that the speaker must not be nominated from the treasury bench. At Ottawa there is no such usage. The speaker is and always has been since the era of responsible government began the nominee of the government; and his election is proposed from the treasury bench. Thereafter his association or connection with the government is supposed to come to an end. He is not a partisan supporter of the government; and his position towards the house, and towards political parties in the house, becomes much the same as that of the speaker at Westminster.

But the resolution that was so long on the order paper at Ottawa disclosed one or other of two conditions, neither favorable to the dignity or position of the chair. It disclosed either that a relationship had been established between the government and the speaker that was adverse to all the honored traditions associated with the chair, and adverse to the good order and discipline of the house; or that the speaker, without being consulted by the government, was willing that the government should jeopardize the position of the chair in the estimation of the house of commons and also of the constituencies. The government for some reason or other did not press the resolution in the house. To have done so would have given the opposition a provoking and legitimate opportunity of driving a wedge deep into the coalition. From any point of view the episode was regrettable; and it was unfortunate that the speaker did not, so far as can be ascertained from the official reports of the proceedings of the house, dissociate himself from the obnoxious resolution, and the inferences as regards the chair which its presence so long on the order paper suggested.

It is to the interest of the Dominion, and also to the interest of the Allies, that the existing coalition at Ottawa should continue at least until the end of the war. But more tact will be needed than was evidenced in the framing of this resolution, if the coalition is to continue working smoothly and effectively until the world is again at peace.

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STATE ADMINISTRATION

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State Councils of Defense. Even before the declaration of a state of war with Germany, councils of defense or similar bodies had been created in some states. Immediately upon the issuance of the declaration, the Council of National Defense established a department to coördinate the state defense activities throughout the nation. This department later developed into the section on coöperation with states. In May, 1917, a conference of the states called by the national council was held at Washington, attended by representatives from every state. Within two months after the conference, state councils of defense had been organized in every state. These councils have been of great assistance in promoting various activities incident to the prosecution of the war and in coöperating with the national council. In more than a dozen states "they have been established by formal legislative act, in the others they have been created by administrative act of the governor, or by the governor with the consent of the senate, and vary in size from six to more than 100 members. They are sometimes composed of ex officio state officers, the governor serving as chairman, but more frequently they are composed of prominent men in the state who hold no other public office. In the latter case, they ordinarily hold office at the pleasure of the governor. The broad purposes for which some of these councils are created are indicated by the preamble to the act creating the California Council:

"To make investigation into the effect of the occurrence of war upon civil and economical life of the people of the state, to recommend to the governor measures to provide for the public security, the better protection of the public health, a fuller development of the economic resources of the state and the encouragement of military training.[1]

"In endeavoring to attain these objects, the powers which the councils may exercise are usually advisory in character, but sometimes they have been vested with more and far-reaching powers. Thus, the West

[1] Laws of 1917, ch. 32.

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Virginia Council may regulate mines, factories, and railroads, fix prices and suppress disorders. In Wisconsin the council may control the distribution of the supply of food and fuel. In Minnesota,[2] the Commission of Public Safety has been granted the broad power to do all acts and things, not inconsistent with the law, for the protection of life, property and public safety."[3] These powers, however, are to be exercised in subordination to the superior control of national administrative authorities.

Work of Efficiency and Economy Commissions. The movement for reorganization of state administration in the interests of efficiency and economy continues to gather headway. Although the war has focused the attention of the people throughout the country upon international relations, it is nevertheless possible to discern certain by-products of the great conflict in the increased interest of the people in efficient government, both in nation and in state, and in their growing impatience with the results obtained from the cumbrous and antiquated forms of government with which we have hitherto been afflicted. Some positive improvements in state administration have recently been effected. An account has already been given in this REVIEW[4] of the civil administrative code enacted by the legislature of Illinois in 1917. The enactment of this code was the direct result of the investigation made two years previously by the Efficiency and Economy Committee of that state. This code constitutes the most important advance yet made by any state in the direction of improved and simplified administration. In most states which have considered the matter at all, the development is still largely in the investigational stage.

Two official commissions appointed in Colorado and Virginia to investigate the state administration and make recommendations for reorganization in the direction of efficiency and economy have recently issued reports. The Survey Committee of State Affairs of Colorado was created by legislative act of 1915, and consisted of seven members—two appointed by the senate, two by the house of representatives, and three citizens appointed by the governor. It was given large powers of investigation and report, covering practically the whole field of state administration. It secured the assistance of experts from

[2] Laws of 1917, ch. 261.
[3] J. M. Mathews in *American Year Book*, 1917, p. 174.
[4] Vol. XI, No. 2, p. 310.

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other states and from the United States bureaus to investigate specific phases of the general subject. The report has been issued in a series of pamphlets, each devoted to a particular topic, concluding with a summary of the findings and recommendations of the committee, accompanied by two charts, one showing the existing organization of the executive branch of the state government and the other indicating tentative proposed changes in certain state departments. On account of lack of time the committee did not recommend a general plan for the complete reorganization of the state administration, but made a number of specific recommendations relating to the offices of governor, secretary of state, state auditor, state treasurer and other officers and boards, together with a number of miscellaneous recommendations relating to such matters as purchasing methods, state finances and budget procedure.

Apparently the Colorado committee is the only similar body which has made a comprehensive survey of the office of state governor. As a result of their investigation they found that, while the governor was ex officio member of a number of state boards, there was nothing in the laws nor in the nature of the duties performed to indicate why the governor was designated a member of some boards and not of others. In regard to the governor's power of appointment the committee found a similar lack of system. They found that, whereas the state engineer is appointed by the governor alone, the five division engineers serving under him cannot be appointed by the governor except with the advice and consent of the senate. The committee recommends that all administrative officers now appointed by the governor with the advice and consent of the senate should be appointed by the governor alone, who, as chief executive, is responsible for results. Further, they recommend that all subordinate employees now appointed by the governor alone or with the consent of the senate should be either under civil service rules and regulations or appointed by the respective administrative officers.

The Virginia Commission on Economy and Efficiency consisted of three members of the legislature and two citizens, appointed under an act of 1916, and "charged with the duty of making a careful and detailed study of the organization and methods of the state and local governments and with reporting to the next general assembly in what way the state and local government can be more efficiently and economically administered." The report of the commission, issued early in 1918, consists of a pamphlet of 67 pages, to which is appended three

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charts giving a graphic representation of the three general departments of the state government. The report deals in the main, however, only with the executive department and points out the familiar defects of state administration which are illustrated in the experience of Virginia—such as the diffusion of authority and responsibility, the lack of official accountability for the administration of the state's affairs, the excessive number of petty elective officers, and the useless multiplication of boards, bureaus and other agencies without any attempt to coördinate functions, make readjustments, or establish proper executive control. The commission recommends that the power of appointment, control and removal of all administrative officers should be vested, as far as possible, in the governor. "The governor should be the business manager of the state in fact as well as in name. He should be held responsible for the proper management of all departments and agencies, and should be given the power to have his policies carried out and his orders promptly executed." A number of other miscellaneous suggestions are made, relating to the supervision of accounts, including expense accounts, uniform fiscal year, abolition of fees, uniform office hours, leaves of absence, collective purchasing of supplies, state insurance, civil service regulations and the reorganization of the public school system.

Both the Colorado and the Virginia commissions recommend the introduction of scientific budget systems, the main features of which are similar. The report of the Virginia commission contains a completely drafted bill designed to introduce without constitutional amendment the recommendations of the commission in this respect. The bill as drafted makes the governor the chief budget officer of the state and authorizes him to employ competent assistants in the preparation of the budget. The general assembly is allowed to increase or decrease items in the budget bill as it sees fit; but the proposed bill prohibits either house from considering further or special appropriations, except in the case of emergency, until the budget bill shall have been finally acted upon by both houses, and requires that all bills introduced in either house carrying appropriations be itemized in accordance with the classifications used in the budget.

The Colorado commission also recommends the plan of an executive budget and undertakes to disarm opposition to the proposal by pointing out that, while the legislature should control the purse strings, its handling of estimates, of expenditures and revenues is the assumption of an inherently executive function. "The purpose of the executive is

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to carry on the government within the limits set by the legislature. By submitting a budget to the legislature, the executive asks the assent of the legislature to carry on the government according to the plan which he has therein outlined. There is nothing, therefore, in this procedure which can be construed as executive encroachment upon legislative functions." The budget, as recommended by the commission, would be compiled under the direction of the governor and submitted by him to the legislature. In order that the governor may be the better able to carry out this suggestion, the commission suggests that there be created the office of budget and efficiency commissioner, with the necessary expert staff, who should be empowered to investigate the activities of the various boards and institutions. The recommendations as submitted by the commission relating to finances contemplate only such changes as may be made by statute or by changes in the house and senate rules. It is suggested, however, that "there are certain other changes which it would be desirable to effect, but which would require amendment to the constitution, such as the right of the governor and heads of departments, institutions, etc., of the state to appear before the legislature in defense or explanation of requests for funds; provision for executive control by the governor over all executive departments, boards, commissions, offices, or institutions; that the legislature be restricted to reducing any item in the governor's budget for the executive branch of the government and be not permitted to raise any of those items; that budget estimates for the judiciary may be increased by the legislature but not reduced; that no special bill making an appropriation shall be enacted by the legislature unless special provision is made to raise the revenue therefor; provision that all appropriations recommended in the budget be authorized and included in one bill; also provisions protecting the interests of the state in the event of a deadlock between the governor and the legislature on the budget and appropriation bills."

An account of the work of state efficiency and economy commissions has recently been published in a bulletin of the New York Bureau of Municipal Research, entitled "The State Movement for Efficiency and Economy," by Raymond Moley.[5] A report on "Economy and Efficiency Commissions in Other States," by A. C. Hanford, had been published in 1915 in the *Report of the Efficiency and Economy Committee of Illinois* (pp. 975–998). This earlier report covered the work of such

[5] Bulletin No. 90, October, 1917.

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bodies in only six states: Massachusetts, New Jersey, New York, Pennsylvania, Minnesota and Iowa. The more recent monograph by Mr. Moley gives an account of the work of fourteen state commissions, in addition to that of the state board of public affairs of Wisconsin and the former department of efficiency and economy of New York. A statement of the origin and personnel of each commission is given, followed by chapters dealing successively with the suggestions of the commissions regarding the election of public officers, proposals concerning general administration, the budget, and the administration of public service functions, ending with a chapter on "Results and Conclusions." This monograph will be a welcome aid and guide to those who wish a bird's-eye view of the work of the commissions and a summary in convenient form of their principal recommendations.

Another monograph largely based on the reports of state efficiency and economy commissions is entitled *A Survey of State Executive Organization and a Plan of Reorganization* (1916), by C. H. Crennan, a doctor's thesis submitted at the University of Pennsylvania. It is divided into three chapters dealing respectively with "Present Organization of the State Executive," "State Executive Organization Defective," and "A Plan of Executive Reorganization." The last chapter is the most valuable. The author not only outlines the proposals of the principal efficiency and economy commissions, but also submits a proposed plan of reorganization, based on the analogy of the national government and adapted to conditions in Pennsylvania.

Operation of the Maryland Budget. The first state executive budget system in the United States, and the first system to be made a part of a state constitution, is that of Maryland. The amendment providing for it was ratified by the electors of the state, voting two to one in its favor, on November 7, 1916. Since that time and even before the Maryland system began to operate several other states either adopted the plan almost in its entirety, or took up certain features of it and embodied them in law.[1] An account of the operation of the Maryland system is, therefore, of more than local interest.

[1] Utah has enacted a statute (Ch. 15, Laws 1917) providing for a budget system modeled directly after the Maryland amendment. Two other states have adopted modified forms of the Maryland plan—New Mexico (Ch. 81, Laws 1917) and Delaware (Ch. 278, Laws 1917) adopting the system for one legislative session. West Virginia has passed an act (Ch. 15, Laws 2d ex. sess. 1917) proposing an

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Actual work in preparing the first Maryland budget[2] was begun in November, 1917. The estimate forms were prepared by the department of legislative reference and approved by Governor Harrington. The budget classifications, chosen according to the object of expenditure, were of a simple and easily understood type. They were: (1) salaries and wages, (2) expenses—maintenance other than personal service, (3) purchase of land, (4) buildings, (5) equipment and (6) new construction. A number of subdivisions, such as rent, fuel, printing, food, etc., were enumerated under the expense classification in order to give some uniformity to the itemization of the data when submitted. A complete set of the estimate forms contained four sheets: sheet No. 1 being for salaries and wages; sheet No. 2 for expenses; sheet No. 3 for purchase of land, buildings, equipment and new construction; and sheet No. 4 for a summary of the preceding sheets. The necessary instructions for making up the estimates were printed at the top of each sheet. The amounts appropriated and expended for the fiscal year just ended, also the amounts appropriated for the current fiscal year, were required in detail. A lack of uniform methods of accounting prevented this information from being complete in many instances. The appropriations requested for each of the fiscal years of the next biennium were required to be clearly itemized. A few of the spending agencies at first hesitated to make itemizations, since they had been so long accustomed to request lump-sum appropriations from the legislature. Each estimate sheet provided space for the governor's allowances and necessary explanatory remarks. The experience gained in preparing the budget suggested a number of changes that will improve the form of the estimate blanks.

Estimates were required to be filed with the governor by December 10. But many of the spending agencies were late in filing their requests, owing to the novelty of the system and to the insufficient and inadequate data at hand for preparing their estimates. Many of the

amendment to the constitution and embodying several of Maryland's budget provisions. Bills, proposing modifications of the Maryland system, were submitted in 1917 to the legislatures of Colorado, Massachusetts and Arizona. Governor Keyes of New Hampshire in his inaugural message to the 1917 legislature suggested the Maryland system for consideration, but no action was taken. A law, signed by Governor Davis on February 19, 1918, provides an executive budget system for Virginia very similar to that of Maryland.

[2] For the provisions of the Maryland budget amendment see Article III, Section 52 of the Constitution.

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estimates were incorrect when submitted and had to be returned and made up a second time. Had the forms been prepared and sent out earlier, the estimates might easily have been submitted to the governor a month before they were, since the fiscal year of Maryland ends on September 30. This would have allowed the spending agencies a month's time after the close of the fiscal year for the preparation of their estimates, and at the same time would have given the governor more time, which proved to be much needed, for review of the estimates and preparation of the budget.

Early in December Governor Harrington secured the services of a budget specialist, who, with the assistance of the executive office force, compiled the estimates and other data for the budget and drafted the budget bill, embracing the governor's recommendations for appropriations. About the middle of December the Governor began to hold public hearings upon the requests for appropriations and continued almost daily until the end of the month, in which time he heard more than eighty of the state's spending agencies. He required a number of the agencies to appear before him; to others he granted hearings upon request.

After the hearings were concluded the governor set to work to review all of the estimates and make his allowances for the budget. The total of the requests for appropriations far exceeded the total estimated revenues as calculated by the state comptroller, so the governor's big task was to make the expenditures of the first state budget commensurate with the anticipated revenues from all sources. This he at length accomplished by having the administrative heads of the larger departments and institutions collaborate with him on several occasions. Acting upon the governor's advice, they reduced their estimates at those points where they judged reductions would least hamper the normal growth of their work. The governor, under a provision of the budget amendment, included the legislative, judicial and educational estimates in the budget without revision; but he had, nevertheless, been consulted as to their probable totals while they were in preparation.

Governor Harrington was unable to deliver his budget to the legislature within the time limit fixed in the budget amendment (twenty days after the convening of the legislature, which met on January 2), owing to delay in printing the budget and to other contingent circumstances. The legislature, however, agreed to extend the time one week, and on January 29 the governor transmitted his budget and budget bill in printed form to the presiding officer of each house. At the same time

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each member of the legislature was supplied with a copy of the budget. The budget bill was immediately introduced by both the president of the senate and the speaker of the house.

The general form of the budget is prescribed in the amendment. As actually made up, the first 24 pages of it contain revenue and expenditure statements. The actual and estimated revenues and expenditures for the fiscal years of 1917 and 1918 are shown together with the balance at the end of each fiscal period. A balance sheet of the current assets and liabilities of the state is given. The condition of the state debt and sinking funds is set forth. A statement of the estimated revenues for the period to be financed, that is, the fiscal years of 1919 and 1920, is followed by a general summary of the financial requirements for each of these years, showing estimates of the state's financial condition at the end of each year. Then follows a statement from the governor relative to a possible decrease of the rate of the direct state tax. On pages 25 to 28 appears a general summary of all the estimates for appropriations. A complete tabulation of the estimates with the governor's allowances is included within the next 110 pages.

Estimates are classified by organization units, and, according to a provision of the budget amendment, are divided into two parts: "governmental appropriations" and "general appropriations." Included under part one, governmental appropriations, are the legislative, executive and judiciary departments, the various state departments, boards and commissions, the public schools and the public debt of the state. Under part two, general appropriations, are grouped the remaining estimates, namely, those of state institutions, state-aided institutions and for miscellaneous purposes. A number of deficiency appropriations for the current fiscal year, to become available on June 1, 1918, are listed following the budget for the biennium of 1919–1920. Appended to the budget are 40 pages of supplementary data concerning state and state-aided institutions as compiled by the board of state aid and charities. This appendix contains certain important statistics relating to the expenditures, receipts, per capita cost, etc., of more than 100 institutions which receive state aid, ranging from $500 to $75,000, aggregating an annual expenditure of approximately $850,000, or nearly one-fourth of the general funds annually available in the state treasury.

The general arrangement of the organization units in the budget bill follows that of the budget. The appropriations to the various organization units are made in lump sums for salaries and wages and for ex-

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penses, with itemized schedules following each sum so appropriated whenever more than one item is included. These schedules "represent the initial plan of distribution and apportionment of the appropriations." Each lump-sum appropriation must be paid out in accordance with the schedule which relates to it, unless and until such schedule is amended. In order to give flexibility to the expenditure of the appropriations and to provide, at the same time, for executive control over the spending officers, the governor is empowered to authorize transfers between items within any schedule, thus amending the schedule. He may make transfers in the appropriations of the executive department, and may approve or disapprove any requests for transfers, which are submitted to him by other spending agencies relative to their own appropriations. Whenever a schedule is amended by the governor, it must be transmitted with his approval to the comptroller, who thereafter is required to pay out the appropriation, or whatever balance may remain, in accordance with the amended schedule. Finally, it is provided that all transfers and changes in the schedules, made or approved by the governor, must be reported by him to the next session of the legislature.[3]

While the budget amendment places certain definite limitations upon the action of the legislature in considering the budget, it prescribes no very definite procedure. It will, therefore, be of interest to note briefly the procedure that was followed by the legislature in the consideration and passage of the budget bill. The bill, as has been stated, was introduced simultaneously in each house of the legislature on January 29, and it was immediately referred to the finance committee of the senate and to the ways and means committee of the house. The senate finance committee seems to have taken the lead in the consideration of the bill. Joint sessions of the two committees were held, and the various appropriations were critically reviewed. No public hearings were held by either committee on the budget, since it was not necessary, as formerly, for the spending agencies to appear before the committees urging their requests for appropriations. The only matter that now concerned the state agencies was to see that the allowances made to them by the governor were not reduced or eliminated by the action of the committees or the legislature. The senate finance committee, however, found occasion to call before it a few of the department heads, for the purpose of explaining some of the budget allowances, and also in one or two instances the committee desired to ascertain whether or not certain subordinates gave full time to the state work.

[3] Section 3 of the Budget Act, Ch. 206, Laws 1918.

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The governor also explained to the finance committee certain of the appropriations. It appears that the members of both the finance committee of the senate and the ways and means committee of the house studied the budget bill rather closely and found, as a result, very few items that they could attack or criticize.

On March 20 the governor submitted to the senate, with the consent of both houses, his first supplemental budget, which under the provisions of the budget amendment became a part of the budget bill as amendments or supplements to the appropriations and items contained in it.[4] On March 22 the finance committee reported the budget bill and supplement favorably to the senate. A motion to defer action on the bill was voted down, and the committee's favorable report was adopted. Immediately the president of the senate submitted a second supplement to the budget by the governor, who asked that it might also be made a part of the budget bill.[5] Upon a motion the additional supplement was accepted. The budget bill was then read a second time and ordered to be printed for a third reading. It passed the senate without amendment on March 26, and was sent to the house where it had its first reading on March 27. It was reported out of house committee on March 28 and read a second time.

Among the several amendments that were proposed at this time, two were adopted, one eliminating the salary of the assistant chairman of the roads commission, amounting to $2000 (the governor having reduced it from $3000 by his first supplemental budget), and the other striking out the appropriation for a director of farm products amounting to $12,000. The elimination of the latter item would have followed as a matter of course, since the bill creating the office had been defeated in the legislature, so that only $2000 was really eliminated from the governor's budget for each of the two years. When this amount is compared with the total budget of each year, aggregating $3,750,000 from the general funds, the house, although the majority was politically opposed to the governor, may nevertheless be regarded as approving the governor's budget practically as he submitted it. The rules of the house were suspended and the bill was passed on the same day that it was amended. The senate, being of the same political faith as the governor, refused to accede to the amendments of the house and a conference committee was appointed. The first conference committee disagreed and another was appointed; this committee made its

[4] *Senate Journal of Proceedings*, pp. 720–733.
[5] *Ibid.*, pp. 812–813.

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report on March 30, when the senate concurred in the amendments of the house and finally passed the budget bill as thus amended. Since the governor had the assurance that the budget bill would be passed within three legislative days before the end of the session (April 1), he did not issue a proclamation, as provided for in the budget amendment extending the session.

During the 1916 session of the legislature between 35 and 40 bills, appropriating money out of the state treasury, were passed and became law. The legislature of 1918, acting under the provisions of the budget amendment, passed only seven bills making appropriations out of the state treasury, two of which were duplicates of two others and were for that reason vetoed by the governor. Another was also vetoed, and still another was reduced by half. The four bills approved by the governor carried appropriations totaling only $19,000. The seven appropriation bills which were passed appropriated unexpended funds now in the treasury and, upon the ruling of the attorney general, were not in conflict with the budget amendment, which requires such bills to make provision for their own revenue, since the budget bill which was passed in compliance with the budget amendment does not go into effect until October 1, 1918. The provisions of the budget amendment with reference to supplementary appropriation bills operated as an effective check upon the passage of the usual large number of special appropriation bills, which have in former years been one of the main causes of recurring deficits in the finances of the state. There was not, therefore, a single supplemental appropriation bill passed for the years 1918 and 1919 in addition to the budget bill.

As yet, nothing can be said of the execution of the Maryland budget, but certain conclusions may be drawn from the operation of the first two stages in the budgetary procedure, namely, the formulation of the budget by the governor, and the ratification of it by the legislature. The strongest indication that the budget was well prepared by the executive may be seen in the fact that the members of the lower house of the legislature, the majority of whom were politically hostile to the governor, found little in the budget bill that they could attack and only a few items that they cared to amend. It was evident that the various state departments and institutions felt that their requests for appropriations had been carefully considered by the governor, and that he had allowed them as much as was commensurate with the probable revenues of the state. For these reasons the spending agencies generally accepted the governor's allowances for appropriations and assumed that the legislature would ratify them as included in the budget.

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The legislature in its action upon the budget seems to have been effective as a reviewing and criticizing agent of the governor's program. Most of the review work, however, was done by the finance and ways and means committees. The intent of the budget amendment, it appears, was that more consideration should be given to the budget upon the floors of the legislature than it received this year. There is room for much improvement in the legislative procedure for handling the budget. While it is true that every member of the legislature was supplied with a printed copy of the governor's budget, and knew at once from the printed journal of each house just what supplements the governor had made, still it is not probable that many of the members scrutinized the budget very closely.

The governor's budget has so far given general public satisfaction and no desire has been expressed to return to the former haphazard methods of making appropriations. Of course, it must be borne in mind that the governor was not so free in making his budget recommendations as he might be if he were the real head of the administrative branch of the state government. He was also hampered in gathering his budget data by a system of public accounting that is not at all adapted to efficient budget making. Adjustment and reform along these lines will tend greatly to improve the system and to make it a real executive budget. In addition to these changes, Maryland needs to adopt methods for standardizing the positions and salaries of the state employees, and also to install a central purchasing department for state agencies, both of which, however, are not directly a part of the budgetary procedure but are designed to contribute effectively to the successful operation of the budget system.

A. E. Buck.[6]

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Budget Progress in New York, New Jersey and Massachusetts. The New York legislature of 1916 passed a law establishing a legislative budget system for the state.[1] In the same year, through the efforts of Senator Walter E. Edge (now governor), the legislature of New Jersey enacted a law providing for a state budget system of the executive type.[2]

[6] Mr. A. E. Buck was the specialist secured by Governor Harrington to aid in preparing the budget and the budget bill.

[1] Laws of 1916, ch. 130. See *American Political Science Review*, XI, 111–113 (1917) for an analysis of the law.

[2] Laws of 1916, ch. 15. See *American Political Science Review*, XI, 113 (1917) for an analysis of the law.

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Two budgets have since been made up in each of these states under the operation of their respective laws. In 1916 the legislature of Massachusetts created a supervisor of administration, who took over the budget duties of the commission on economy and efficiency established in 1912.[3] It will be of interest to record briefly the progress made in the budget procedure of these states since the passage of these laws.

New York. Each of the three budget agencies—the governor, the comptroller, and the joint legislative budget committee—used a separate set of estimate forms in collecting the data for the 1917 budget. The preparation of so many forms, twenty-one in all, created a great deal of confusion among the various state agencies, and besides there was little uniformity in the information so furnished. Before the budget was completed the need for a uniform set of estimates was evident. When it came time to make up the 1918 budget the three budget agencies worked out and agreed upon a standard set of estimate forms. Full instructions were sent out with these forms, and as a result the estimates when filed were much more satisfactory in their contents than they had been the previous year. However, the practice was continued this year of making and presenting to the legislature three separate compilations of the estimates, one by each of the budget agencies. The main purpose of each of these compilations seems to be to tabulate the estimates, and even this is done more or less incompletely. All three are lacking in full and complete information as to how the expenditure program is to be financed. Besides, there is the added and useless expense of thousands of dollars to the state for editing and publishing three compilations, which are only transcripts, more or less complete, of the same data. It would seem wise to combine the good points, both in form and arrangement, of the three compilations into a single document, which would contain all the information submitted upon the standard estimate forms, and at the same time set forth a complete survey of the state's financial resources together with the condition of its bonded indebtedness.

For three years Governor Whitman, with the aid of a special budget staff, has prepared a tentative appropriation bill and submitted it to the legislature at the beginning of the session. In the first of these acts, which was submitted to the legslature of 1916, the governor proposed to bring all appropriations into a single bill and to make the appropriations in lump sums with itemized schedules and a system of transfers under executive control. The legislative committees in preparing their

[3] Laws of 1916, ch. 296; also Laws of 1912, ch. 719.

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general appropriation bill accepted the governor's plan to the extent of adopting the high itemization of appropriations, but without schedules or provisions for transfers. The joint legislative budget committee has followed the same scheme in making up the annual appropriation bill for 1917 and that for 1918. The governor in preparing his appropriation bill for 1917 abandoned his plan of the previous year based upon lump-sum appropriations with itemized schedules and the power of transfer, and adopted the legislative system of segregated appropriations without transfers. He carried this to the extent of requiring all appropriations to be thoroughly itemized. The legislature refused to itemize its appropriations for salaries and maintenance and the governor vetoed them, but they were immediately passed over his veto. The effect, however, was that the appropriations for legislative purposes were itemized for the 1918 budget. As a result, a highly itemized form of making appropriations has been developed.

Two years of experience have shown that this extremely segregated form of appropriation bill is very inelastic and does not operate satisfactorily, especially as applied to the institutions. Already Senator Sage, chairman of the senate finance committee, has expressed himself in favor of making lump-sum appropriations for maintenance and operation, and of continuing to itemize only the personal service. It is observed that this would give the administrative officers of the institutions and departments the necessary leeway in making expenditures and would be much better than the present rigid program. The same itemization would be continued in the estimates and the allowances would be made for each item by the committee, just as they are now, but they would only serve as a guide in the expenditure of the lump-sum amounts that the appropriation bill would carry. Each spending agency would be required to report monthly to the comptroller its expenditures under each lump sum; and if it did not follow the itemization of the budget, it would be required to explain the changes.
next legislature.

Acting under the provisions of the budget law, the legislature has created a permanent budget staff to assist the joint legislative budget committee in its consideration of the proposals and requests for appropriations. This staff, during the two years that it has been in existence, has gathered a mass of valuable data relative to the services and needs of the several spending agencies of the state.

The procedure of the legislature in enacting the appropriations leaves much to be desired in the way of effective criticism. It is true that

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the budget law provides for a procedure by which the general appropriation bill may be open to discussion for at least eight legislative days between the time of its introduction and passage. However, such discussions are becoming more and more a matter of form, and are usually participated in after the bill has reached its third reading and just preceding its final passage. The minority party, despite the fact that there are always a few minority members on the joint legislative budget committee, is practically without influence in the preparation of the budget and has very little weight when it comes to the passage of the appropriations, owing to its inability to offer telling criticism. Senator Wagner, the present minority leader, proposed in 1916 and again in 1917 an amendment to the senate rules providing for the appointment of an audit committee consisting of five minority senators. The function of this committee was to review and criticize the financial measures of the majority, and also to examine the comptroller's reports in order to detect waste and inefficiency in administration. It seems advisable that such a committee should be created to give the members of the minority first-hand information of the finances of the state and to develop intelligent criticism.

There are far too many appropriation bills under the present procedure to be at all consistent with sound budget making. The budget, or general appropriation bill, as made up by the joint legislative budget committee and passed by the legislature, does not by any means comprehend all the demands made upon the state treasury. It appears that the budgetary procedure amounts to deciding upon and enacting individual measures, one by one, throughout the entire legislative session, without the formation of any definite plan, except as one exists in a tentative form in the mind of the joint legislative budget committee. In 1917 there were 89 separate appropriation acts; in 1918 there were 90. Each of these bills is reported, considered, enacted and signed by the governor separately. The result is to complicate the budget procedure and to confuse both the legislature and the public. An additional complication is introduced by the fact that appropriations for the same organization unit are scattered through several appropriation acts passed at different times during the legislative session. A definite procedure should be adopted for handling all special appropriation bills, and besides, all appropriations for any given organization unit should be included as far as possible in one appropriation bill.

Through the efforts of the comptroller a uniform system of accounting is being introduced into all the state agencies. Such a sys-

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tem will assist very materially in the collection of the estimate data and in the better execution of the budget appropriations. It will also enable the appropriations to be intelligently compared.

A concurrent resolution to amend the state constitution in relation to debts contracted by the state passed the 1918 legislature.[4] This resolution embodies the provisions of sections 2, 4, 5, 6 and 7 of article IX of the defeated constitution of 1915. It provides for a serial bond system instead of bond issues secured by sinking funds, which have proved uncertain, complicated and expensive. It also prevents long term bonds from being issued to pay for short-lived improvements. At present the contributions to the sinking funds vary in amounts and are so uncertain that there is a surplus of about $35,000,000 above the amount needed for amortization, as computed upon an actuarial basis. The proposed amendment provides for automatic and correct annual contributions to insure a normal increase in these funds, so that each will be sufficient to pay the debt at maturity, and also for exchanging the sinking fund bonds for the simpler and safer serial bonds. In order to become a part of the constitution this proposed amendment must be passed by the next legislature and ratified by the people.

For a number of years the state hospital commission of New York has been purchasing supplies for the insane hospitals under its control. The legislature of 1918, however, acting upon the recommendations of a commission appointed in 1917 to investigate methods of purchasing, enacted a law providing for the establishment of a central purchasing department.[5] Such a system when once established should operate to increase the economy and efficiency of the budget system. It should also act as an effective means of controlling the supply end of the budget. The experience of central purchasing in other states has demonstrated the value of such a system in securing a better quality of supplies at lower prices than can be done by other methods.

A law passed in 1917 provided that service records and ratings be kept in the various departments, and the civil service commission is now installing such a system.[6] There is, however, still great need of classification and salary standardization of the civil service.[7] Such a

[4] Print No. S. 1668, proposing to amend sections 2, 4, 5, 11 and 12 of article VII of the constitution.

[5] Laws of 1918, ch. 400.

[6] Laws of 1917, ch. 653.

[7] Recommendations were made for civil service standardization in the report of the Horton Civil Service Committee (1916).

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system would place the responsibility of making salary increases in the budget largely upon the shoulders of the administration and would not take up the time of the joint legislative budget committee and the legislature. Moreover, it would allow the administrative officers of the state to exercise their judgment in the choice of their subordinates, and would provide a means whereby efficient service could be rewarded on the basis of merit rather than because of political influence.

New Jersey. The estimate blanks employed in the preparation of the first budget (1917), while modeled directly after the forms suggested in the rules appended to the budget law, were found in practice to be indefinite and confusing in their classifications; they did not provide for the reporting of sufficient information, and they did not coördinate the budget data with the work of the central purchasing department. In the preparation of the 1918 budget the estimate blanks previously used were supplemented by other forms calling for a detailed estimate of farm, shop and industrial activities, a complete summary of requests for appropriations to accompany the estimates of schools, and a similar summary to accompany the estimates of institutions. The main budget classifications were the same as those used the previous year, but somewhat greater detail was required. The institutions were required to give their per capita cost for each budget classification.

In preparing the budgets of 1917 and of 1918 it was found that too little time was allowed for the careful review and revision of the estimates by the governor. The estimates were not submitted to the governor until November 15 of each year, owing to the fact that the fiscal year of the state ended on October 31. The space of two weeks after the close of the fiscal year was too brief for the satisfactory preparation of the estimates by the spending agencies, and the governor had only about six weeks at his disposal after the estimates had been submitted to him until he was required to send his budget to the legislature. To remedy this situation a law was passed by the 1918 legislature, which changed the beginning of the fiscal year to July 1.[8] Another law, amending the budget law, made October 15 the time for the submission of the estimates to the governor.[9] This change has the advantage of bringing the beginning of the fiscal year about four months nearer the time of the filing of the estimates, and likewise the passage of the budget correspondingly nearer.

[8] Laws of 1918, ch. 144.
[9] Laws of 1918, ch. 221.

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The budget law provides that the governor may appoint two special assistants to help him in the review of the estimates and the preparation of the budget. In the preparation of the first budget Governor Fielder designated one special assistant, whose duties were mainly clerical. He also consulted with the state treasurer and the state comptroller in the review of the estimates. Governor Edge, however, in the preparation of the 1918 budget, employed two budget assistants, one of whom visited all the state institutions and investigated the necessity of the requests for appropriations. He was likewise assisted by the state comptroller and the state treasurer, who with himself constitute the state house commission. He also invited the joint appropriation committee of the legislature, the members of which had been designated in advance of the session, to sit with him at the public hearings on the requests, and thus obviated the necessity of the appropriation committee duplicating the hearings, as had been done the year before.

Considerable improvement has been made in the form and contents of the 1918 budget over the previous one. The arrangement of this budget is much better and the information that it contains more complete. An account is set up for each organization unit and the various amounts to be appropriated under this account are designated as items. The items within an organization unit are grouped under the heads of the budget classification, that is, salaries and wages, maintenance, repairs and replacements, new buildings and miscellaneous. Totals and subtotals are given and the explanations of the requests are printed. The number of employees, students, inmates, etc., are shown. However, the information given in the budget still lacks considerable of the necessary detail to enable the members of the legislature judiciously to consider the various needs of the several spending agencies.

For constitutional reasons the budget law contains no provisions governing the legislative procedure upon the governor's proposals. It has been the practice of the joint appropriation committee, after having received the governor's budget, to do whatever investigating it deemed necessary and then proceed to draft the appropriation bill, disregarding, if it chose to do so, the governor's recommendations. In fact, the governor's proposals have had very little influence over the amount of the final appropriations, especially when he was a member of a different political party from that of the majority of the legislature. The legislature has followed practically the same procedure since the adoption of the budget system as it did before in making appropriations.

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In 1917 the joint appropriation committee did not present the appropriation bill to the legislature until the final day of the session, when the bill was passed with little opportunity for examination or discussion. The procedure, however, was improved somewhat in 1918 by the fact that the joint committee submitted the appropriation bill to the legislature three or four days before final adjournment.

A striking improvement has been made in the general form of the appropriation act. In the 1917 appropriation bill the amounts appropriated for each item were spelled out in full, classification was wanting, and there were no totals. It was, therefore, difficult for the legislators, or anyone else, to ascertain the total appropriated to any organization unit. The 1918 appropriations have been set up in items of sufficient detail to reflect the budget, and the amounts appropriated have been given in figures, extended to a column, and totaled for each organization unit. A compromise has also been effected to some extent between the highly itemized form of making appropriations and the lump-sum form. In practice the former method has proved too rigid to permit the proper exercise of administrative ability, and the latter form has been regarded as giving an opportunity for graft. The appropriations to a number of the state institutions have been made in lump-sum amounts with supporting schedules to control the expenditure of the funds. By sections 6 and 7 of the appropriation act the comptroller has been given the power to interpret the intention of the purpose of all appropriations.[10] This is designed to give greater flexibility to the expenditure of the state's money. The budget law has also been amended to permit greater freedom of transfer by permission of the state house commission between items of appropriations granted to an organzation unit.[11] All the appropriations for the fiscal year 1918–19, with two or three minor exceptions, have been included in the general appropriation act, so that practically all special appropriation acts are eliminated.

Formerly, a large supplemental, or deficiency, appropriation bill was passed each year; but since the budget law forbids the passage of such bills, the legislature of 1917 placed in the hands of the state house commission the sum of half a million dollars to take care of all emergencies that might arise throughout the year. This policy, it is claimed, has worked well, and is to be continued.

New Jersey has several laws recently enacted, the operation of which

[10] Laws of 1918, ch. 221.
[11] Laws of 1918, ch. 290.

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tend to develop and strengthen the financial system of the state. A central purchasing department, created in 1916, has operated successfully in conjunction with the budget system to secure greater economy in the expenditure of the public funds. All supplies of the various state departments and institutions are purchased through this central agency.[12] Several laws were passed in 1917 providing a uniform budget procedure for municipalities and counties of the state, and establishing a scientific policy for their financing in anticipation of the receipt of the tax revenues.[13] The legislature of 1918 passed a law vesting the regulation and control of all the state charitable and correctional institutions in a state board of charities and corrections. This board has control of all appropriations made to these institutions and is the only agency that can submit to the governor their estimates, which may be reviewed and modified by the board before submission.[14] Another law provides for the classification and salary standardization of the civil service of the state and the establishment of a bureau of personal service standards and records.[15] A third law empowers the civil service commission to apply classification and standardization to the positions and employments in the civil service of the several counties and municipalities.[16]

Massachusetts. In 1916 the economy and efficiency commission, established in 1912, and charged with the duties of examining the estimates and making financial investigations, was abolished and the office of supervisor of administration was created with practically the same budget duties as those of the commission. He is appointed by the governor and confirmed by the council for a term of three years, and is given authority to appoint a staff of assistants.

Under a joint order of May 23, 1917, a joint special committee on finance and budget procedure was appointed, consisting of three senators and six representatives. This committee was directed to "concern itself especially with a study of budget procedure" and to "report a preliminary budget or financial scheme for the fiscal year commencing December 1, 1917."

The committee was formally organized on June 12 and sat during

[12] Laws of 1916, ch. 58.
[13] Laws of 1917, ch. 192, 153, 154, 155, 156 and 212.
[14] Laws of 1918, ch. 147.
[15] Laws of 1918, ch. 24.
[16] Laws of 1918, ch. 54.

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the remainder of 1917. It was divided into three subcommittees in order to cover the field of investigation for which the committee was created. The work of the committee was grouped under three main heads, namely: budget and other financial matters; motor vehicle fees and fines; and the consolidation of commissions. Each of these divisions was assigned to a subcommittee for investigation. Mr. L. H. Gulick, of the Training School of the New York Bureau of Municipal Research, served as secretary to the committee.

Estimates were received by the committee, numerous hearings were held, and the subcommittee on the budget visited practically all the institutions of the state to study at first hand their various needs.

A preliminary budget plan for financing the state for the fiscal year 1918, together with an appropriation act was drawn up by this committee and submitted to the legislature in January, 1918.[17] Special emphasis was laid upon the requests of institutions for capital outlay.

In its report on state finances and the budget[18] the committee discussed at length the defects of the present system of state financing, and recommended the adoption of a budget system in which "the governor must be connected with the preparation of the budget."

An act was passed by the 1918 legislature[19] requiring the supervisor of administration "to prepare a budget for the governor, setting forth such recommendations as the governor shall determine upon." The contents and general arrangement of the budget are prescribed. It must be submitted to the legislature not later than the second Wednesday of each January. All appropriations based upon the budget are required to be incorporated in a single bill. No legislative procedure for considering the budget is prescribed in the act.

The constitutional convention of Massachusetts, which met during 1917, received five resolutions relating to the budget, all designed to increase the authority of the governor, and four providing for an executive budget, one of which was a copy of the Maryland amendment and another a modified form of it. This convention took a recess during the session of the legislature; and is again meeting to consider, among other things, the adoption of a budget system.

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[17] House doc., no. 17.
[18] House doc., no. 1185.
[19] Laws of 1918, ch. 244.

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BOOK REVIEWS

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The Life of the Rt. Hon. Sir Charles W. Dilke. Begun by STEPHEN GWYNN, M.P. Completed and edited by Gertrude M. Tuckwell, Literary Executrix of Sir Charles W. Dilke. Two volumes. (New York: The Macmillan Company. 1917. Pp. xix, 557; vii, 614.)

Within a year after Sir Charles Dilke left Trinity Hall, Cambridge, and at the time when—in 1866—he was making a tour of the English-speaking world, he confided to his brother, Ashton Dilke, that he had educated himself and was still educating himself, so that he could be most useful as a statesman and as a writer. "My aim in life," he added, "is to be of the greatest use I can to the world at large, not because that is my duty, but because that is the course which will make my life happiest."

Dilke was not born into the English governing class. His grandfather was owner of the *Athenaeum* and was associated in a managerial capacity with the *Daily News* in its early years. It was Charles Dilke's father on whom the baronetcy was conferred for his part in organizing the international exhibition of 1851 in London. But the grandfather was a publicist; and it was his grandfather who was chiefly responsible for Sir Charles Dilke's education and for the bent towards politics that was characteristic of Dilke even before he wrote from Denver, Colorado, the letter in which he informed his brother that he had begun his apprenticeship to statesmanship. Two years later Dilke was elected for Chelsea as a Radical; and except for an interval from 1886 to 1892 he was of the house of commons from 1868 to his death in 1910.

Mr. Stephen Gwynn and Miss Gertrude Tuckwell's well-written, well-ordered, and exceptionally informing biography, tells with an interest that is continuous how Dilke, in seasons that were prosperous, and in seasons that were adverse, worked to realize the aim that in 1866 he had set before himself as his guiding principle in life. Dilke's

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prosperous season (1868–1885) brought him advancement to an amazing degree. By temperament, intellectual equipment and interest he was singularly well-adapted for both parliamentary and official life; and his advancement in the years from 1868 to 1885 is an indication of the extent to which politics at Westminster in the two decades that came after the second reform act became less and less a field reserved for the territorial governing class and its protégés. Dilke had no connection, direct or indirect, with the governing class. A man of his independence and outspokenness could never have sat for a nomination borough; although some nomination boroughs survived both the reform act of 1832 and that of 1867. Dilke would have been ill at ease as the representative of such a borough or as the protégé of any highly-placed member of the governing class. He went into Parliament as the representative of a large London borough, in which, in the years from 1867 to 1884, the radical element was predominant.

From his entrance into the house of commons he took politics seriously. It was his only business in life. He was assiduous in his work at Westminster; always kept in closest touch with his constituency; and the remarkable progress he made from 1868 to 1885 in the house and in the constituencies was due partly to his equipment, partly to his intense interest in politics, and to a considerable degree to the industry and thoroughness that were characteristic of his long political life. His prominence and service in the house of commons as an unofficial member, and his acceptability in the constituencies as an exponent of advanced Liberalism, had by 1879 secured for him so well-established a place in the Liberal party, that in that year Beaconsfield, always alert to note the development of new ability in the political world, predicted that Dilke would be Gladstone's successor. Gladstone himself arrived at the same conclusion in 1882, after Dilke had served two years in the first office to which he was appointed—that of under-secretary for foreign affairs in the Liberal administration of 1880–85.

Promotion came quickly to Dilke. He was of the cabinet as president of the local government board by the end of 1882; and the premiership was well in sight when, to the astonishment and dismay of the political world of England, he was cited as co-respondent in the Crawford case that came before the divorce court in London in 1885. Dilke was dismissed from the suit. His biographers are convinced that the allegations against him were unfounded. But their history of the case is not convincing. It is the least satisfactory chapter in a biography that for many years to come must rank high in the political literature

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of England, that must be read by every student who would familiarize himself with the constitutional, parliamentary, party and social history of England of the period between the reform act of 1867 and the Teutonic onslaught on civilization that began in 1914.

Fortunately it is not necessary to arrive at any opinion on the Crawford case as it is presented in these pages in order to appreciate Dilke's political work, either before or after his disappearance from the house of commons from 1885 to 1892. What is clear from the biography is that after his return to the house of commons for the Forest of Dean in 1892 the possibility of the premiership or even of a place in the Liberal ministries of 1892–95 and 1906–10 was gone; that he did not regain the position he had held as an unofficial member before 1880; and that despite adverse conditions, he accomplished much in and out of Parliament in the years from 1892 to 1910 as a result of his keen interest in industrial and social questions, such as old age pensions, dangerous trades and sweated industries, and of his continuous association in its legislative aims with the Labor party that established itself in the house of commons at the general election of 1906.

Labor politics had an attraction for Dilke during his first term in Parliament. George Odgers, one of the earliest of Labor candidates, assisted him in his electoral campaign in Chelsea in 1868; and in 1869 Dilke, Fawcett and Lord Edmond Fitzmaurice supported Odgers, when as a Labor candidate he contested the borough of Southwark in opposition to a Liberal and a Conservative candidate. To social politics, and in particular to the movement for better housing of the wage-earning classes, Dilke had given much attention when he was at the local government board in 1882–1885; and when he resumed his political activities in the constituencies and in the house of commons, so far as domestic politics were concerned, it was to labor and industry that he devoted most of his attention.

It is not possible to estimate what English political life lost by the catastrophe of 1885. But it is certain that industrial legislation was beneficently accelerated—that some industrial reforms, hitherto regarded as impossible, were achieved—through Dilke's later career in the house of commons, and by the organization work of which his home in Sloane Street, Chelsea, was for many years the center. One word more. The Dilke biography covers much more ground, opens up avenues of English political, industrial and social conditions more than is usual in biographies of men who reached cabinet rank. Dilke's

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political interests after 1886 account for this, and put his life outside the conventional run of much English political biography.

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Démocratie et Politique étrangère. By JOSEPH-BARTHÉLEMY, Professeur Agrégé à la Faculté de Droit de Paris, Professeur à l'École Libre des Sciences Politiques. (Paris: Librairie Félix Alcan. 1917. Pp. 531.)

This is one of the most scholarly and comprehensive treatises in the vast output of literature which the present war may be said to have provoked. There had already appeared in England and America a considerable literature dealing with the subject of secret diplomacy to which many persons are disposed to attribute responsibility for wars in general and the present war in particular, but most of it was unscientific and polemic in character. In the present work, however, we have the first elaborate, scientific treatment of the subject by a distinguished scholar whose familiarity with the history of European foreign policy reveals itself throughout his treatise.

M. Barthélemy divides his work into three parts: the first, entitled "democracy and diplomacy" in which he discusses the question as to whether a democratic form of government is as well fitted as monarchy for conducting diplomacy and examines into the proper organization of a democracy for efficient diplomacy; the second, entitled "democracy and war" in which he considers the capacity of a democracy for prosecuting war, its proper organization for the efficient carrying on of war, the rôle of the legislature, the executive, etc., in time of war; and the third, entitled "the democracy of nations" in which he considers the relations between the internal and international policy of country, the liberty and solidarity of nations, etc.

There is, as the author points out, a more or less widespread belief that a democratically organized government, controlled by public opinion, whose processes must be open and subject to the light of publicity, and which does not look with favor upon a permanent professionally trained diplomatic service, is at a disadvantage as compared with monarchy in the conduct of diplomatic intercourse. Monarchy has the advantage of a permanent, highly trained diplomatic personnel; it is less controlled by an uninstructed public opinion; the influence of a highly respected and long experienced hereditary executive is often a

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source of strength, and it may have the advantage of family alliances with other states. Thus Germany has derived an advantage in her Balkan relations from having German princes on the thrones of various Balkan states. M. Barthélemy admits that these circumstances may be an advantage, but at the same time they may be a source of danger, and he points out that the German Emperor's family connections with the Balkan powers were not sufficient to prevent the outbreak of the present war. He points out also, what is well-known, that the character and ability of the diplomatic representatives of democratic governments are often in no manner inferior to that of the representatives of monarchical governments, as the diplomatic history of France and the United States clearly shows. The diplomacy of France under the third republic, he adds, has been quite equal to that under the monarchy. The facts, he says, demonstrate that the faults of republican diplomacy have been neither more frequent nor serious than those of monarchical diplomacy, and the marked diplomatic success of republican presidents like Carnot and Faure in France and Wilson in the United States is evidence enough that the head of a republic may exert as decisive an influence upon international policy as kings or emperors.

Regarding the now much discussed subject of secret diplomacy M. Barthélemy very properly distinguishes between secret negotiations and secret treaties. The conduct of negotiations is very much like a game at cards and as it would be folly for the players to exhibit their cards to their opponents so it would be absurd to require negotiators to conduct their negotiations openly. Secrecy of negotiations, as he points out, is often necessary to insure peace; moreover, the public may not be well informed regarding the questions at issue and it might be fatal to make the negotiations dependent upon the approval of public opinion. In all democratic states the results of the negotiations generally require the approval of one or both chambers of the legislature, and this check is sufficient to protect the country against possible dangers of secret negotiations.

The conclusion of secret treaties, however, is a different matter. Against such diplomacy there have recently been many protests in England, France and Germany; and in England there has been organized the Union for Democratic Control as a protest against the policy of secret diplomacy. In France the General Confederation of Labor in 1915 announced its intention of calling after the close of the war a congress of representatives of labor organizations of the different nations to establish a durable peace on certain bases, the first of which was

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"the suppression of the régime of secret treaties." M. Barthélemy reviews the European practice and calls attention to the fact that Europe is covered by a network of secret treaties, conventions and understandings, that is, agreements which have never been submitted to the legislature or made public. He does not, however, share the view that such treaties are necessarily dangerous or in contradiction with the principles of democracy rightly understood. France, as he points out, owes her alliance with Russia and her understandings with England and Spain to secret agreements. Nevertheless, while he admits that secret treaties may be desirable and even necessary, the power of the government to bind the nation by such agreements should be subjected to certain restrictions.

His final conclusion regarding the whole matter is that it "is not necessary in the interest of democracy, to democratize diplomacy, as some imprudent demagogues demand; it is the government, the executive power which is and which must remain the first organ, the first representative of democracy in its external policy."

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The Law and the State. By LÉON DUGUIT. Translated by Frederick J. de Sloovère. Harvard Law Review, November, 1917. (Cambridge, Mass.: Harvard University Press. 1917. Pp. 185.)

During the last few years the doctrines of Nietzsche and Treitschke have been frequently explored in order to exhibit their association with the motives and methods of Germany, as made manifest by the present war. Relatively little attention has been given to another set of doctrines whose significance, in this connection, is probably greater than that of the cynical teachings of Nietzsche and Treitschke. German juridical theories of the nineteenth century are more significant than the latter theories, because they have a longer and broader history and because they are more subtle, in that they do not so patently justify despotism and force as the primarily essential elements of effective government.

It is the purpose of the volume in hand to examine German and French doctrines (since the late eighteenth century) concerning the nature of the state, from the standpoint of the problem of legal limitation upon political authority. Is the state bound by obligations of a

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legal kind? "Does there exist a jural principle (*regle de droit*) superior to the State, which forbids it from doing certain things and commands it to do certain others? . . . If the State is not subject to such principle, there is no longer any limit to the material power of the State. . . . The State is *Macht*, and nothing more." The author defines as metaphysical those conceptions which regard the state as possessed of a personality distinct from the personalities of the individuals who form the social group, and as having a will by its nature superior to individual wills; and he classifies as realistic those conceptions which deny that the state is a person, and hold that there is no will of the state but only individual wills of those governing. Duguit believes that only the latter conceptions can establish a sound basis for juridical limitation of state power. "The wills of those in power, being purely and simply individual wills, can, like all other wills, be subordinated to an imperative principle of right and law superior to themselves."

The doctrines of the earlier part of the period under review are criticized generally along familiar lines. Thus the author shows, first, the fundamental inconsistency in the eighteenth-century metaphysical individualistic doctrine, the mutual incompatibility of its two main principles—that of the sovereign personality of the state as the embodiment of the general will, and that of the autonomy of the individual, possessing natural rights upon which the state cannot infringe. Secondly, he exposes the sophistry of the attempts of Kant and Hegel to reconcile legislative omnipotence with individual liberty by the argument that since the legislative will of the state is the will of the generality of the individuals the latter in submitting to the state are submitting to their own wills. Thirdly, he points out the frankly despotic implications of Hegel's political doctrine of the morally and legally omnipotent state all the powers of which are synthesized in a monarch personally absolute and unassailable. Finally, he indicates the futility of the vague efforts of French metaphysicists since the Revolution, represented by Constant in the early nineteenth century and Esmein in the recent period. Both sought juridical limits to the sovereign power of the state; the former found the sanction for the limits, normally in public sentiment and the system of balance of powers in government, and ultimately in the right of passive resistance; Esmein found the only sanction to be public opinion.

Among later German jurists, only a few, of whom Gerber and Gierke are the most important, have attempted to establish legal limitations

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for state authority; and the modern German realists, of whom the Bavarian Seydel is the most representative, ascribe legal unassailability to those who actually govern. Taking Jhering and Jellinek as the leading representatives of the later German metaphysicists, Duguit reveals the speciousness of their efforts to harmonize the absolutist notions proceeding from Kant and Hegel (that the state is a great moral personality which alone can realize the moral idea, and that it consequently may impose its will without reserve) with the notion of the state under law—the *Rechtsstaat*. Jhering found this accommodation in his theory of egoism and auto-limitation. The motive which impels the state to submit itself to law is the same as that which leads man to control himself, namely, personal interest. As far as it conserves its interest to do so, the state submits itself to a law which it itself creates. Likewise with Jellinek, though law is exclusively the creation of the state, and though the state can modify or abrogate law at will, yet so long as law exists the state is subject to it. Since the state limits its action by its own will, its subordination to law leaves intact its unrestricted power.

The object of French realistic theories is to explain the binding force of law, to construct a basis upon which to establish limitation upon the power of those who govern, and discover the sanction for such limitation. These French theories agree in the following points: (1) the state does not exist as a sovereign person distinct from the individuals constituting society; (2) political power is a fact, and is vested in those actually governing at any given time; (3) obedience is due to the latter, not because they are in authority, but only when, and to the extent that, they govern legitimately—in conformity to the jural principle; (4) thus is established the legitimacy of resistance, passive, defensive, and aggressive. These theories diverge where they attempt to discover the nature of the jural principle limiting political authority. Sketching briefly the attempted solutions of Royer-Collard, Guizot and Benoist, the author, though agreeing heartily with the motive and general character of their theories, finds that they fail to characterize with precision that principle. He proposes again, as affording an adequate solution for the problem, his doctrine of social solidarity, a doctrine which he had set forth fully in his earlier works. He resolves the contradiction between state sovereignty and individual autonomy by eliminating both notions. There are no sovereign rights or individual rights to maintain or harmonize. The fundamental fact which is the basis of political life is that of social interdependence. Upon this fact is based

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the jural principle which limits all, governing and governed, and creates political duties only, and not political rights.

Duguit's doctrines have been singularly misconceived in this country. They lack the tight simplicity that attaches to the traditional dogma of a legally unlimited and legally irresistible sovereignty, research concerning which is not to question the fact or the political indispensableness of its existence, but only to discover its precise location, its distinguishing secondary attributes, and its moral limitations. Duguit's theory, abandoning the notion of sovereignty, has thus been regarded as loose, and as anarchistic in logical tendency. No elaboration or defense of his positive views is attempted in the present work. One of the chief values of the volume is that, by revealing the inconsistencies and inadequacies of the doctrines which it analyzes, it will likely induce readers to study, or study again, the author's full exposition of his theories in his other works. Inspiration and aid for such study are afforded by a brief "Note on Duguit" appended to the volume. The note is by Harold J. Laski, who gives a concise statement of the content, setting and influence of Duguit's views. Professor de Sloovère's translation of the volume seems adequate and clear.

F. W. Coker.

Yale University.

International Law Codified and its Legal Sanction. By Pasquale Fiore. Translated from the fifth Italian edition with an introduction by Edwin M. Borchard. (New York: Baker, Voorhis and Company. 1918. Pp. xix, 750.)

It is important for an understanding of the present volume to distinguish between the forms which the codification of a body of laws may take. From the point of view of positive law codification is the systematic presentation of rules actually in force, and it is in this sense that the term is generally used in referring to the various codes adopted by the individual states as the rule of law for their citizens. This method is possible only where there are definite sources of law to draw upon, such as the decisions of national courts and the statutes of national legislatures. In the case of international law the process of codification must be something more than a mere systematizing of existing rules. That has been successfully accomplished within recent years by such standard textbooks as the two volumes by Oppenheim. But without minimizing the value of these contributions to the posi-

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tive law it may be said that even before 1914 scholars and publicists alike recognized the necessity for the formulation of new rules of international law more consonant with the needs of the times.

Professor Fiore's codification falls into the latter class of critical and constructive studies. In the introductory chapter, after observing that international law is still in the process of development and that it is the duty of the jurist to look to the future as well as to the present, he describes his purpose as being "to set forth international law, taking into account the existing law and such rules as may be capable of becoming law. In other words, we intend systematically to formulate the body of rules which consist in part of those accepted by states in general treaties, in their legislation or in diplomatic documents, and in part of those rules found either in the popular convictions which have manifested themselves in our time, or in the common thought of scholars and the most learned jurists" (p. 78).

It would, doubtless, have added considerably to the value of his work if the author had indicated in some way those parts of his text which are a statement of existing law, and those other parts in which modifications are introduced in favor of a more equitable and progressive rule. Certain reforms which he advocates will, however, be recognized at once by their novelty. Under the present law an individual person has no rights as such; what protection the law affords him is granted merely in so far as he is the citizen of a particular state which may choose to make claims in his behalf. Fiore looks upon the community of nations as a *magna societas* and claims that the individual has certain "international rights of man," such as the right of emigration and the right of expatriation, which take precedence of the law of the state of which he is a citizen. Likewise Fiore recognizes the international rights of collectivities, such as churches, corporations and other associations which are possessed of individuality in their right. In respect to the fundamental basis of international law, Fiore lays down the doctrine that a violation of the law by one state is an offense not only against the victim of the wrongful act, but against all the other members of the international community, who should thereupon collectively intervene in behalf of law and order.

Professor Borchard has merited the thanks of all who are interested in the problem of the development of international law. While the reviewer has been unable to test the accuracy of the translation at more than a few points, the scholarly character of the translator's own contributions to international law is a sufficient warrant for the accu-

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racy of the whole volume. In a brief critical introduction he gives due credit to the meritorious services which the author has rendered to the cause of international reorganization. It may be that in consequence of the world war the new international law will be developed beyond the hopes of the idealists of the past decade; but all the more shall we respect them for having lifted up their voices in protest against the international system which made possible such a catastrophe.

C. G. FENWICK.

Bryn Mawr College.

Die Internationalisierung der Meerengen und Kanäle. By RUDOLF LAUN. (The Hague, Martinus Nijhoff. 1918. Pp. 172.)

The author, a professor of the University of Vienna, was entrusted with the preparation of this report by the so-called Stockholm Neutral Congress of 1916. The Swedish Peace Committee had previously declared in favor of "internationalizing" straits and canals forming parts of important maritime routes. The author has attempted to analyze the project and to present certain possible solutions which he believes will lead toward a lasting world peace. The book is temperate in tone and the author seems to have approached his subject in a spirit of detachment. He has, however, quite underestimated the new difficulties in the way of eventuating the project, due to the widecast disruption of international faith. After the experiences of the present war, a nation having, or expecting to have, a wide command of the seas can scarcely be expected to consent to the opening of canals or straits controlled by it, especially along important trade routes. The development of the submarine, more particularly the uncontrolled use to which it has been put in this war, has multiplied the difficulties a thousandfold. The author has sensed some of these difficulties. He admits, for instance, that if certain water passages should be opened only to merchant vessels, it would be difficult to deny the right of passage to armed merchant ships. Until the use of submarines has been controlled by new inventions, one must reckon with the arming of merchant ships (p. 127).

The book is divided into two parts, the first being a survey of the various proposals for a special international régime for straits and canals made at sessions of learned bodies such as the Institute of International Law, and in the writings of specialists. The second part contains the proposals of the author himself. Among other things, he suggests that the internationalizing of straits and canals can be used as a

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powerful weapon for the maintenance of international good faith because the benefits may well be restricted only to states who have remained faithful to their treaty obligations (p. 162). There are many other thoughtful suggestions well worthy of study. We recur again, however, to the opinion that most of them would seem practicable only in the event that the project as a whole is administered by international authority, and not left in the hands of the territorial state.

ARTHUR K. KUHN.

L'Idée de la Liberté au Temps présent. By A. EGGER. (Zurich: Rascher & Co. 1918. Pp. 47.)

The author is professor of law in the University of Zurich. He sees involved in the war a sharp conflict between different schools of political thought, chiefly in respect of their ideas of liberty. As he views it, it is not in the ordinary sense a struggle between liberalism and conservatism, but between individualism and "stateism." The individual, having become economically free, engaged in unrestrained competition, which gradually led him to collectivism. In such a state of society, power, particularly group power, became the foremost consideration, and the general welfare was lost sight of. This inevitably led to similar ideals in state politics because power without became necessary to maintain power within. In the Prussian state, the controlling philosophy led to an enthronement of the state idea and the elimination of liberalism itself, whereas in France, England and the United States, the struggle for liberty succeeded in establishing safeguards based upon lessons derived from the French Revolution and the principles of philosophers such as Rousseau, Spinoza and Locke.

Liberty must be a ruling principle rather than an interest. It must be applied objectively, rather than subjectively. It is more than a formula and must have universal signification; accordingly alliances of nations creating merely rivalries of power must be suppressed. Peace must therefore depend upon "the reason of liberty" rather than upon mere mechanism.

ARTHUR K. KUHN.

Alsace-Lorraine under German Rule. By CHARLES DOWNER HAZEN. (New York: Henry Holt and Company. 1917. Pp. 246.)

This is one of the best and most interesting books on the subject of which it treats. It does not pretend to be a complete or erudite in-

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vestigation, but is frankly partisan and uncompromising in its advocacy of the rights of France and its denunciation of German aims and methods.

However, we are not among those who maintain that a historian is bound to be "neutral" and "impartial" in his attitude toward those guilty of rape or murder in the first degree. All that can be required in such cases is that the indictment be clearly drawn, the evidence on both sides fully presented, the conclusions fairly stated, and the sentence duly pronounced.

With these requisites of sound historical treatment of great historical crimes, Professor Hazen complies in this volume. The indictment against Germany is clearly drawn in the chapters on "The Treaty of Frankfort," "The Constitution of 1911" and in "The Saverne Affair." The evidence is fully and fairly presented in a series of chapters on the various historical aspects of the case. It would be difficult to find a better summary of matters historical than is contained in the chapter entitled "Alsace-Lorraine Before the Treaty of Frankfort."

The conclusions of our author are stated and the sentence is duly pronounced in the ninth or last chapter. Alsace-Lorraine must be returned to France. The fatal work of the Treaty of Frankfort which "more than any other cause, is responsible for having fastened militarism upon Europe," must be undone. There is, indeed, no other solution possible. The right of conquest, as illustrated in the cession of Alsace-Lorraine to Germany, must be denied. This is one of those cases where nothing is settled until it is settled right. The Treaty of Frankfort has never been morally binding. On this matter there can be no compromise.

Nor is any other solution practicable. A referendum would be unsound in theory as well as impracticable. "No one would think of demanding that a popular vote should be taken today in the Department of the North, for instance, to see if it should become French again." Does any sane person believe that the people of Texas, Arizona, or New Mexico should be consulted after their reconquest by the United States in case they should have been handed over to the tender mercies of the Mexican government in accordance with the terms of the Zimmerman Note? "Who would be the citizens of Alsace-Lorraine entitled to vote and to decide by their vote the fate of the provinces?" "Again, who would conduct the referendum?"

"It has been suggested that Alsace-Lorraine be made an independent and autonomous monarchy with a royal house of her own, within the

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German Empire. It has also been suggested that she be made an independent and neutralized state outside the German Empire as well as outside France. These are but ways of evading the problem, not ways of repairing a grievous wrong which has been and still is a serious public injury, an offense to the world's sense of justice, and a menace to the world's peace. They ignore the rights and the wishes of the people concerned. The wrong can be repaired in only one way, by the return of these provinces to France where they belong and where they desire to be."

The Alsace-Lorraine problem is a question which concerns not merely France and Germany, or even the people of these sorely oppressed provinces. It is a European question and must be settled in the interest of Europe as a whole. Such a settlement would also be in the interest of liberty, justice, and humanity.

AMOS S. HERSHEY.

University of Indiana.

Why Italy Entered into the World War. By LUIGI CARNOVALE. (Chicago: Italian-American Publishing Company. 1917.)

This volume which has been widely circulated, probably with the approval of Italo-Americans, if not with that of the Italian government, states a considerable number of propositions about Italian history and the declaration of war by Italy which it is necessary that the American people should understand. The statement of the reasons is preceded by two hundred and forty-two pages of a more or less schematic treatment of Italian history. The first section deals with the atrocities of the Austrians in Italy, beginning with the stoning of Balilla in 1746, and emphasizing particularly the work of Radetzky in 1848 and 1849. The second part goes back to ancient Rome, and sketches briefly the antiquity and development of Italian aspirations for unity, with particular attention to the history of the Trentino and of Trieste. Then follows a relatively brief statement of the diplomatic negotiations in 1914. The final sixty pages only are devoted, therefore, to the reasons for Italy's entry into the war, which are in sequence as follows: patriotism; irredentism and desire to recover the Italian provinces still in Austrian hands; the unreturned visit of Humbert to Vienna in 1882; national cohesion and military efficiency; fear of isolation; the right to travel; human solidarity.

There is nothing in the volume not already known to students of the subject, and little in the author's statement of it which will be of any

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value to students in subsequent years. The omissions of historical events are almost as peculiar as the inclusion, as the third cause of Italy's entrance, of the failure of Francis Joseph to return Humbert's ceremonial visit. What Mr. Carnovale apparently means to say is that it was worth Italy's while to make war upon Austria to force from her an official recognition of the occupation of the Papal States in 1870. But his manner of stating it is characteristic of his treatment of much of Italian history. While the gist of what he has to say is exactly what most Americans need to be told, it would have been much more effective if the history were more accurately stated, and if there were a franker acceptance of certain familiar facts, so well-known to everyone as to be beyond concealment—such, for instance, as the fact that the Triple Alliance was originally due to Italian rather than Austrian initiative. The book contains few documents and none not easily accessible elsewhere. The Italian version seems to contain nothing not in the English edition.

ROLAND G. USHER.

Washington University.

Rising Japan: Is She a Menace or a Comrade to be Welcomed in the Fraternity of Nations? By JABEZ T. SUNDERLAND, M.A., D.D. Billings Lecturer (1913–14) in Japan, China, and India. With a Foreword by Lindsay Russell, President of the Japan Society. (New York: G. P. Putnam's Sons. 1918. Pp. xi, 220.)

The purpose of this book is stated by the author as follows: "What I am trying to do is simply to aid a little, if I may, in causing the people of this country to lay aside their national, racial, and religious prejudices, and to judge of this rising and important neighbour nation of ours on the other side of the Pacific, fairly and justly, that is, by the same standards that we employ in judging our neighbour nations on the other side of the Atlantic, and that we want other nations to employ in judging us" (p. 49).

The volume covers three main topics: the civilization of Japan, the menace of a Japanese invasion of America, and the Japanese in California. Other brief chapters deal with the civilization of Asia, the menace of Japan in China, and the menace of Japan in the Philippines. The civilization of Japan is discussed under such heads as public order, progress of science, art, industries, agriculture, sanita-

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tion, temperance, crime, education, and so on, and the conclusion is that "Japanese civilization, like our own, is far from perfect. . . . They have many limitations some of them very serious. But of what nation may not the same be said?" (p. 48). The menace of a Japanese invasion of America covers the origin of the idea and points out the improbability and impossibility of the event. As to Japan in China, a Monroe Doctrine of the East is advocated. The California controversy is briefly treated and its solution is found in the plan proposed by Dr. Sidney L. Gulick. And as to the Philippines, Japan does not want them and could not take them if she did. In any case, we are told, "our stolen islands are a peril as well as a burden" (p. 204); they should be granted independence and placed under an international treaty of neutrality. The concluding paragraph voices this sweeping generalization: "If an armed conflict ever arises between the two nations, it will not be a war of invasion of America, but, as already said, a war of aggression on our part, which we shall be compelled to fight at Japan's door, the crime of which will not be Japan's, but our own."

The attitude of the author toward Japan is, throughout, appreciative and sympathetic. The treatment is expository, the style is pleasing, but in order to assure easy reading the author lays himself open to the charge of superficiality. It is the kind of book which would interest and convince one who had read some of the newspaper yarns about Japan and the Japanese, and who wished to see them answered or explained. But it would hardly alter the views of anyone who had fixed ideas on the subject. It was very much worth while to show up the puerility of many of the charges against the Japanese which have been current of late, but the whole question of the position of Japan in Asia and in America cannot be treated as simply as Dr. Sunderland has done.

PAYSON J. TREAT.

Leland Stanford Junior University.

Nationalism and Internationalism, the Culmination of Modern History. By RAMSAY MUIR. (Boston: Houghton Mifflin Company. 1917. Pp. 224.)

Professor Muir regards the war as a struggle between the "twin causes" of nationalism and internationalism, on the one hand, and militarism and racialism—that is, "the belief in the inherent superiority

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of one race over another and in the fundamental antipathy between races" (p. 40)—on the other hand. The formula obviously leaves untouched many phases of the war, but the lesson it conveys regarding international peace is an important, if familiar, one: "Lasting peace will not be attained in Europe until every reasonable national aspiration has been satisfied" (p. 197).

The most instructive passages of the book are those, scattered here and there, in which the relationship between democracy and nationalism is pointed out. This has been twofold: in the first place, the effort to base government on the consent of the governed has tended to restrict the sway of government to those who understood one another; in the second place, the doctrine of equality has broken down class barriers and furthered that blending of the diverse elements of population which is necessary to nationalism. Both are facts which should be pondered by the exponents of internationalism.

The opening section of the book (pp. 1–36) comprises a rather imprudent excursus in the field of political theory and legal history which might advantageously have been omitted.

The statement on page 185 that the first general arbitration treaty was that of 1898, between Italy and the Argentine Republic, overlooks Article XXI of the Treaty of 1848 between the United States and Mexico.

EDWARD S. CORWIN.

Princeton University.

War Time Control of Industry. The Experience of England. By HOWARD L. GRAY. (New York: The Macmillan Company. 1918. Pp. xv, 307.)

This carefully written, clear and readable statement of the steps taken down to the close of 1917 by the British government to control industry to promote, primarily, efficient conduct of the war and, secondarily, the well-being of the people of Great Britain under the strain of the past three years, is more than its title page promises. It contains, in fact, an illuminating comparison of the steps taken by Great Britain from August, 1914, and by the government of the United States from our entering the war on April 6, 1917, to the close of that year.

Where so much valuable information is set forth in available form in a volume of manageable size, it seems perhaps captious to lament that there is not still more. It is, however, unfortunate that the important subject of milk is disposed of in less than four pages.

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A tremendous achievement of the British government is its reduction of infant mortality, during the second year of the war, to the lowest point ever reached in the history of England. The control exercised over the milk industry is known to have contributed largely to this beneficent end. A comparison of the steps taken in England and America would have been of great use to American children now when, for the first time, the national government through the Children's Bureau has embarked upon the task of saving the lives of 100,000 children below the age of five years.

Ten chapters deal with the following: railways; munitions and labor; the coal mines; wool and woollens; hides and leather; shipping; food (sugar, meat and bread); agriculture; conclusions and comparisons. Of especial value are the conclusions and comparisons (with the action of the United States) of the closing chapter.

FLORENCE KELLEY.

New York City.

European Treaties Bearing on the History of the United States and its Dependencies to 1648. Edited by FRANCES GARDINER DAVENPORT. (Washington, D. C.: Carnegie Institution of Washington. 1917. Pp. vi, 387.)

Students of political science and international law as well as of American history will welcome the publication by the Carnegie Institution of Washington of *European Treaties bearing on the History of the United States and its Dependencies to 1648.* Beginning with the Papal Bull of 1455, first conceding a monopoly to Portuguese trade in the southern regions of Africa, and ending with extracts from the treaty of Münster (1648), in which "Spain for the first time in a public treaty, and with express mention of the Indies, recognized the right of the subjects of another nation to trade and hold territory in both Indies" (Intro. p. 7), it includes the diplomatic settlements of the first discussions in modern history of the freedom of the seas.

The series, of which this is the first volume, is designed, according to the general editor, Dr. J. Franklin Jameson, to include "those treaties and parts of treaties, between European powers, which have a bearing on the history of the United States and of the lands now within their area or under their government as dependencies." The original text, together with an English translation, an introductory statement and a bibliography of each document is presented. Collation with the

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original manuscripts has been carried out by the editor, Dr. Frances Gardiner Davenport, who has added to the convenience of the work by an introduction showing the historical relation of the documents and an adequate index.

QUINCY WRIGHT.

Harvard University.

Western Influences on Political Parties to 1825. By HOMER C. HOCKETT. (Ohio State University Studies. XXII, No. 3. Pp. 157.)

As a study in American party history this essay is a work of scholarly merit and historical value. It shows a careful and detailed study of the western frontier and of the influence of the west on party life, from pre-Revolutionary days to 1825. It brings into view the political philosophies of John Adams and Alexander Hamilton in relation to popular government, and it reveals why two classes of agriculturists came together in support of Jefferson—the big plantation slaveholders and the little back-country farmers. It shows how the first parties in our history were marked by geographical lines, a division arising from the early antagonisms between the regions of the Allegheny mountains and those of the Atlantic seaboard. The essay considers the issue of the west in the Constitutional Convention of 1787, the rise of new states, and the triumph of the principle of equality in statehood as opposed to that of territorial subjection. There is an enlightening chapter on "The Decline of Federalism," and another on "The Era of Nationalism: Disruption of the Republican Party."

Although Federalism was carried west by New England stock it was not able to withstand frontier conditions, and Professor Hockett records the fact that only 364 Federalist votes were cast against Jefferson in Ohio in 1804. He might have cited the opinion of the juror in Indiana a little later who thought an action for libel would be justified if a man were called a Federalist. Triumphant western Republicanism seemed to the staid Federalism of New England to threaten the subjection of eastern interests and sound government to disorderly and incongruous elements, and it was this feeling that led men like Timothy Pickering to a consideration of a northern confederacy. The views, habits, and interests of the east were not easily reconciled to those of the south and west. Growth toward nationalism came in the process. Quincy of Massachusetts sounded the most distinct note of dislike and dread in New England of the growing west.

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Rufus King, the last Federalist candidate for President, saw impending the fate of his party and he advised that the only course to pursue was to let democracy pursue its own natural course and let Federalists support "the least wicked section of the Republicans."

The author sets forth fully the change in Jefferson's party under the era of nationalism, and he records Gouverneur Morris' keen observation that Jefferson's party had been dissatisfied and particularistic not because the power of the central government was too great, but because that power was not in their hands.

The author traces with effective and well fortified generalizations the economic development of the west from 1815 to 1825, in regard to occupational life, markets, transportation, and the influence of that life, leading to such divergence of the west and south as led the west to come to the support of the New England candidate for the presidency in 1824. Professor Hockett's essay is an historical study which all serious students of western and party history will gladly welcome to their libraries.

JAMES A. WOODBURN.

University of Indiana.

Principles Governing the Retirement of Public Employees. By LEWIS MERIAM. (New York: D. Appleton and Company. 1918. Pp. 465.)

This volume concerning the retirement of public employees is one of the series dealing with the principle of administration prepared for the Institute for Government Research. It is a highly creditable study appearing at an opportune time when the attention, not only of public employers, but of private employers as well, is being centered on employment questions.

Mr. Meriam restates the well recognized objects which are being sought in establishing a system of retirement—to improve the character of public employees, compensate partially for under payment, stimulate advancement, eliminate unfit employees, retain able employees, etc. These are objects which are as desirable for all classes of public employees as for school teachers, firemen and policemen, for which retirement schemes are usually provided. There is then discussed the prevailing unsound pension systems, and the several problems which they raise. These problems are dealt with specifically and upon this discussion is based the author's conclusions as to principles which

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should govern in the establishment of a retirement system. The entire discussion concerning problems and methods, is lengthy and detailed and will naturally appeal only to the limited group of public and private persons who come into serious contact with employment problems.

There are certain chapters, however, which have a more general appeal. The taxpayer who wonders why government is not highly efficient can read the chapter on "Objects Sought" both with interest and profit. In fact, the statements of this section must be preached energetically, if retirement systems are soon to become a part of our governmental programs. The concluding chapter is of even more value, because in it are so excellently summarized, not only the reasons for a retirement system, but the problems which such systems raise and their solution.

When so many books on government are dealing with generalities or desirable impossibilities, this practical study is most acceptable.

LENT D. UPSON.

Detroit, Mich.

Municipal Functions. By HERMAN G. JAMES, J.D., Ph.D. (New York: D. Appleton and Company. 1917. Pp. xi, 369.)

Professor James, author of the most recent addition to the National Municipal League Series, believes that improvements in the form of city government alone cannot provide satisfactory municipal government. Such reforms must be supported by an electorate with "clear notions of what a city should and can be expected to do." Hence this book is presented to the citizens of American cities as a "simple but comprehensive survey of the whole field of municipal endeavor," in order that they may have "standards of accomplishment by which a city government may be measured." The book is also "intended as a text book in college classes in municipal government."

After giving a "brief presentation of the stages through which the sphere of action of the city has passed," from the sixth century B.C. to the twentieth century A.D., the author in the main body of the work, submits the achievements of the city "in the whole range of major activities" to a carefully worked out standard of measurement.

The fundamental standard of measurement which Professor James applies is the "social welfare." In his interpretation of the "social welfare" the author is, on the whole, radically progressive. For example, the standard of measurement for a health program includes a

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municipal dairy farm as a possible means for providing pure milk; municipal manufacture and sale of ice as a means of supplying pure and cheap ice; municipal slaughter houses (as in European cities) as a means of guaranteeing a pure meat supply. For education, it includes a curriculum which, in the secondary schools, makes vocational training the chief concern; wide use of school plant for social centers and neighborhood meetings; and municipal movies. For "public morals," it includes the European practice of regulation, or preferably, management by the city of lotteries and gambling, in place of the American unsuccessful attempt at prevention; and public owned and managed dance halls. For "social welfare," it includes the provision by the city of "decent quarters at rents which the working people are able to pay" as a solution of the housing problem, until all wage earners receive a sufficient wage to enable them to rent a sanitary and decent residence (p. 156); municipal assistance in securing for wage earners reasonable hours and adequate wages, first, through standards set by the city in dealing with her own employees, and second, through regulations incorporated in public utility franchises; elimination of unemployment through municipal employment agencies and the construction of public improvements at times of financial depression; working-men's insurance provided by the city; municipal savings banks, pawn shops, dance halls and skating rinks; city medical attendance free or at rates which the poor can pay; and free legal advice.

While outlining the standards for a paternalistic program of municipal activities, in the interest especially of the wage earners, Professor James does not overlook the obligations of that class to the city. For example, in return for reasonable hours and proper compensation, "a high standard of industry on the part of its unskilled employees and . . . a high order of training and ability on the part of its skilled laborers" must be insisted upon (p. 161). He also points out the danger which, in the case of municipally owned utilities, may arise from the illegitimate use of the power of city employees organized for political purposes.

Although the author's viewpoint on the whole is pronouncedly radical, in the discussion of certain methods by which the proposed program of municipal achievements may be best carried out the judgments, recommendations and conclusions of the author are discriminating, well-balanced and at times almost conservative. For example, in the discussion of the regulation of public utilities as a means of securing adequate service at reasonable rates, the public is warned that

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"a policy of securing the interests of the public without any regard to the fair demands of the corporations will again defeat its own purpose" (p. 262). Moreover, municipal ownership (ch. x) is not held up as a cure-all for the difficulties of utility regulation, as the trend of the earlier chapters leads one to expect; its advantages and disadvantages are carefully evaluated; and the conclusion is reached that "all public utilities are not to be treated alike." For certain utilities, such as waterworks, "good theaters at low rates," and pawn shops, "municipal ownership is a logical necessity," while for other utilities local conditions should largely determine the policy. All legal and financial difficulties, the author believes, should be removed, however, so that municipal ownership would be "a sword of Damocles suspended over the heads of uncontrollable corporations."

The forty-seven pages devoted to municipal finance—including revenues, debt, budget and accounting—permit only a brief discussion of a few of the more significant aspects of that important field of municipal functions. His observations and conclusions in that field are, however, especially suggestive and thoroughly sound; though they are necessarily too general to be of much value to officers or citizens looking for practical aid. It is highly fitting, after outlining such a comprehensive paternalistic program of municipal activities, to conclude, that "what the financial resources of cities commonly are and how they can be increased becomes . . . the foundation stone for the building of a municipal program." The growing financial burden of the city should be met through improved methods of taxation, including expert assessors and lot and block maps; a larger measure of state aid; wider application of betterment taxes and excess condemnation; and, when efficiency in municipal adminstration permits, greater revenue from income-producing property. In the case of bond issues, administrative control should be substituted for legislative limitation. Since it is not financially possible "to do everything at once," the author in the closing chapter calls upon the public-spirited citizens to get together on a comprehensive program in which the luxuries—"more showy aspects of city improvement"—give place to the "more obscure phases of social welfare."

While the book is intended to be a guide for public-spirited citizens, the demand of such citizens for concrete examples is almost entirely disregarded. Practical men of affairs, who must be reached if municipal reform is to succeed in America, ask first: "Where and with what success has the proposed measure or policy been tried?" Without

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such information they are inclined to give scant attention to the constructive theories of writers in the academic field. The practical value of the work would certainly have been enhanced by supplementing the general principles with concrete examples.

The chapters on "Public Morals" and "Social Welfare" (chs. v and vi) deal largely with controversial subjects. Hence the standards set up by the author will be standards only for those who agree with his viewpoint. Many among those who have the best interest of the city at heart do not believe with the author that Sunday amusements, gambling, drinking, etc., are distinctly local administrative questions to be handled in the light of "the prevailing community opinion." "The fact that our population is made up in good part of people who were brought up under European standards of conduct" (p. 125) will not convince many Americans that there should be no generally recognized American standards of public morals for cities, nor will it lead to the universal approval of the adoption of the "Continental Sunday" for American cities. Moreover, municipal improvement in America, to be permanent, must be based upon American experience under American conditions rather than upon European.

Sins of omission should not be charged up against an author choosing his material from such a vast field. It may be suggested, however, that no standard for the measurement of a public health program is adequate which leaves out of account measures taken to discover and eradicate venereal diseases.

As a guide for municipal citizens, the chief value of the work lies in the timely emphasis upon social amelioration, and in the general survey in a single volume of the whole field of municipal activities. As a textbook for use in college classes its value for the study of any one function is somewhat limited on account of its broad scope and lack of concrete examples. Its value will be greater for classes which have at hand concrete materials (found in municipal reference libraries) by which the principles and theories in the book may be illustrated and tested. Aside, however, from the question of the value of the book as a text, for a society such as the National Municipal League to put its imprint upon a textbook seems, to the reviewer, to be of doubtful propriety.

ORREN CHALMER HORMELL.

Bowdoin College.

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American City Progress and the Law. By HOWARD LEE MCBAIN. (New York: Columbia University Press. 1918. Pp. 269.)

This volume contains the substance of lectures given by Professor McBain during the spring of 1917 at the Cooper Union in New York City. It deals wholly with the law as it now stands in relation to city progress, and is not intended to pass judgment upon what the law ought to be. In that respect it differs from most of the legal discussions which have been incorporated, during the last dozen years, in books relating to city planning and public improvements.

The author presents a clear, interesting and valuable summary of the way in which constitutions and laws sometimes facilitate and at other times obstruct the efforts of city authorities in dealing with such problems as the abatement of the smoke nuisance, the restriction of billboards, the limitation of building heights, zoning, the excess condemnation of land, the public ownership of municipal utilities, and so on. In each case he indicates the extent to which reform movements must reckon with the law, whether they like it or not. This is something which much needed to be done, for reformers are proverbially impatient of legal barriers and many a well-intentioned plan of civic improvement has gone on the rocks in our day by reason of its failure to regard the obvious limits which circumscribe the police power of municipalities. Of all the subordinate units of government in the United States, the city is surrounded by the largest number of legal restrictions. There is no direction in which it can go very far without encountering them. Constitutions, statutes, charters and the common law together form an iron ring around the discretion of the municipal authorities, even where the principle of municipal home rule has been given recognition.

Professor McBain does not touch the practical aspects of the problem which his book presents. To do this would require a far larger volume. But he has cleared the way for anyone who may henceforth venture into the controversial subjects which inevitably connect themselves with his general theme. How far and by what methods may the present legal restrictions upon the cities be removed? Is it desirable that American municipalities should be encouraged by the loosening of the fundamental laws, to embark upon schemes of municipal ownership? What facilities should the law provide for cities which are now eager to launch forth into the field of social reform and reconstruction? The answer to those questions is not for the lawyer

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alone to give. The political, economic and social aspects of the whole problem must be held equally in mind.

Within the limits to which the author has confined himself, however, the field has been carefully and adequately covered. The book is well arranged and well written.

WILLIAM BENNETT MUNRO.

Harvard University.

New York as an Eighteenth Century Municipality. Prior to 1731. By ARTHUR E. PETERSON.

New York as an Eighteenth Century Municipality. 1731–1776. By GEORGE WILLIAM EDWARDS.

(Columbia University Studies in History, Economics and Public Law, LXXV, Nos. 1 and 2. New York: Longmans, Green and Company. 1917. Pp. xv, 199; 205.)

These twin volumes taken together give the reader a comprehensive view of the government, functions and life of the city of New York from its earliest beginnings down to the outbreak of the American Revolution. The field covered is divided at the year 1731, the date of the last and most important of the New York colonial charters, known as the Montgomerie Charter. The studies do not purport to be historical narratives setting forth the consecutive events in the history of the colony familiar to the student of the American colonial period; they aim rather to portray the history of municipal institutions, activities, and customs of early New York.

A glance at the tables of contents as well as at the titles of the two books indicates that they were worked out in accordance with a common scheme of treatment. Each author has a chapter or chapters on the following topics: introductory survey of government, trade and industry, regulation of land and streets, docks and ferries, keeping the peace, and fire protection. Dr. Edwards has a chapter on the political conditions of early New York and also one on finance. He has, furthermore, concluded his chapters with a brief summary of the facts and tendencies set forth, always a welcome aid to the reader. The absence of an index to either volume is not, however, entirely compensated for by an elaborate analytical table of contents. Neither study has a preface and the reader is obliged to discover from the

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voluminous footnotes the sources upon which the authors drew for their materials, the chief source seeming to have been the minutes of the Common Council of New York. It is to be expected that Dr. Peterson, who treats the earlier period, should have been more dependent upon this source than was Dr. Edwards.

It is beyond the scope of this note to summarize any of the contents of these volumes. Suffice it to say they will commend themselves to two classes of readers. The student of history and government will find them mines of valuable information, carefully arranged and scientifically weighed; and the general reader who gets beyond the somewhat uninviting titles will find much to repay him. The books are written in an exceedingly readable style, and he will be interested not only in the graphic pictures of the humble origin of Greater New York, but he will also be startled to discover how many metropolitan institutions and policies have their roots in the eighteenth century.

ROBERT E. CUSHMAN.

University of Illinois.

MINOR NOTICES

A novel and interesting, as well as useful, public document is *The War Cabinet: Report for the Year 1917*, issued by the British government. This includes a brief account of the internal organization and procedure of the new central committee of five which exercises general control over the British administration. But it includes also a series of chapters presenting a comprehensive and well written discussion of the machinery and functions of the British government, mainly during the year 1917, though in some matters summarizing earlier events since the beginning of the great war. Military operations are given some attention; but the bulk of the report deals with such matters as army and naval administration, munitions and air craft, the regulation of industry and shipping, food control, and public finance.

Such an official report naturally describes events from the point of view of the present ministry; and does not emphasize what has been adversely criticized. But there is no attempt at fulsome praise; and the report as a whole can be commended as a straightforward and readable account of an eventful year, such as is seldom found in official documents.

The *Federal Law Quarterly* (Federal Publishing Co., Indianapolis), the first number of which appeared in April, 1918, aims to serve as a

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quarterly supplement to the two volumes, *Important Federal Laws* and *Federal Rules and Regulations*, compiled by John A. Lapp. A foreword states that the publication will contain the following classes of material of interest to the student of federal law: (1) the statutes; (2) the supplementary rules and regulations which have the force of law; (3) the interpretations which are given by administrative officials; (4) the rules of procedure of courts and of administration officers, boards and commissions. There is also a "summary and review" a page in length setting forth the most important recent changes in the field of federal legislation and regulation. The initial number comprises two hundred pages and contains the text of about forty statutes and regulations. The different documents reprinted do not seem to be arranged in accordance with any particular scheme unless it be the order in which the matter is received at the office of the editor. An index or a table of contents alphabetically arranged would be a convenience to the reader. This publication will be of great value to everyone who is making an effort to keep informed regarding the numerous statutes and administrative orders emanating continuously from our government at Washington.

Procedure in State Legislatures (Philadelphia, American Academy of Political and Social Science, 1918, pp. 112) by Dr. H. W. Dodds is the title of a very meritorious study of the methods by which our state legislatures discharge their functions. Little has heretofore been written on this subject and the author has done a real service not only to students but to legislators themselves in preparing a work which contains in concise form so much valuable information concerning the methods by which our legislators actually do their business. He considers in turn the power of the legislature over its own procedure, the organization of the two houses, the methods of settling contested elections, the selection of legislative employees, the introduction and reference of bills, the appointment of committees, readings, the use of the previous question, suspension of the rules, legislative leadership, etc.

The study is based not merely on an examination of the formal rules but upon a detailed study of legislative journals, debates, court decisions, committee reports, correspondence with legislators and other sources of information which throw light upon the actual methods of legislative procedure. It reveals in striking form the various defects in the present methods of procedure and indicates where reforms could be advantageously introduced. It is a study which ought to be placed in the hands of every member of the legislature.

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In *The Processes of History* (Yale University Press, 1918) Professor Frederick J. Teggart of the University of California presents a new and suggestive method of historical interpretation. Following the methods of evolutionary research in the biological sciences he examines the factors which have moulded the development of the human race and in so doing endeavors to interpret in a new light the characteristics of modern political organizations. "Students of Nature," Professor Teggart points out, "have most significantly enlarged the knowledge of the world during the last fifty years; but students of Man have made no such striking advance in their field of investigation." The reason, he believes, is to be found in the fact that historians, economists and sociologists have devoted most of their energies to the collection of facts, and have left out of account the need for "refinement in the technique of investigation." This point of view is indeed well worth examination and discussion.

The *Proceedings of the Ninth National Conference on City Planning* (N. Y., 1917) contains the papers read at the Kansas City meetings last year. The discussions range over a wide field, including such topics as railroad terminals, street widening and traffic regulation, parkways, zoning, and the practical application of city planning principles.

Quite out of the ordinary run of textbooks is the volume entitled *Use your Government* by Alissa Franc (N. Y., E. P. Dutton & Co., 1918, pp. 374). The purpose of the book is to explain, not what American government is but what it does, and particularly what it does for every section of the community. This is made clear by the grouping of the material under such chapter-headings as "The Farmer," "The Immigrant," "The Negro," and "The Woman in her Home." Unfortunately the workmanship is not nearly so good as the general conception. The material is not well digested and the volume has in consequence the flavor of the encyclopedia. There is an unusual amount of information in the book and most of it is accurate; but too much is of the miscellaneous sort and the style of the volume is not such as to make any strong appeal to the plain citizen for whose enlightenment it is intended.

Under the title *Liberty and Democracy* (Boston, Marshall Jones Co.), Professor Hartley Burr Alexander of the University of Nebraska has reprinted various essays which have appeared from his pen in the *North*

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American Review, the *International Journal of Ethics* and other publications. The volume deals rather with problems of principle than with problems of policy and the author warns his readers that they will find in its pages no program of construction or reconstruction. This, in truth, may be accounted a commendable feature in a day when so many writers are bombarding the world with their hasty plans for the practical reorganization of government and so few are giving much attention to the study of politics as a pure science. Aristotle's famous postulate that "he who would duly enquire about the best form of the state ought first to determine which is the most eligible life" is the text of the author's discussion. Professor Alexander makes an earnest plea for more "athletes of the mind, forever trained and in training," especially among those who assume the function of governing and of setting forth plans of government.

Limits of space preclude even brief reviews of all the war books which have appeared during the last few months. But mention should at least be made of a few which are of more than passing interest to the student of political science. *Militarism and Statecraft*, by Professor Munroe Smith (G. P. Putnam's Sons, pp. 286) is probably the most important of this group. It contains interesting chapters on such topics as Bismarck's political theories and the diplomacy of the Iron Chancellor, as well as on the Austro-German diplomacy of 1914. *The War and the Coming Peace* by Professor Morris Jastrow, Jr., (Lippincott Company, pp. 144) is a companion volume to the same author's *The War and the Bagdad Railway* and deals with the moral rather than with the material issues of the war. *Democracy and the War* by John Firman Coar (G. P. Putnam's Sons) is a study of what other lands may learn from German experience, although not in emulation of it, with special attention to the factors which have made for the regression of democracy. *America among the Nations* by H. H. Powers (Macmillan Company) is a survey of American development into a position of world influence and of the degree in which Americans must now adjust their reflections to new magnitudes. Having suddenly become members of the European family, the author remarks, we must get the family point of view, and the task will not be easy. The Carnegie Endowment for International Peace has issued, in its series of preliminary economic studies relating to the great conflict, volumes on the *Economic Effects of the War upon Women and Children in Great Britain*, and *War Administration of Railways in the United States and Great Britain* (Oxford University Press).

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RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

BEATRICE OWENS[1]

AMERICAN GOVERNMENT AND PUBLIC LAW

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